TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 205

IN RE CLYDE WILSON SUMMERS, PETITIONER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED JUNE 29, 1944.

CERTIORARI GRANTED DECEMBER 11, 1944.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 205

IN RE CLYDE WILSON SUMMERS, PETITIONER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 23, 1945.

[fol. a] **UNITED STATES OF AMERICA**

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of May in the year of our Lord, one thousand nine hundred and forty-three, within and for the State of Illinois.

Present: Clyde E. Stone, Chief Justice; Justice Francis S. Wilson, Justice Loren E. Murphy, Justice William J. Fulton, Justice Walter T. Gunn, Justice June C. Smith, Justice Charles H. Thompson; George F. Barrett, Attorney General; Warren C. Murray, Marshal.

Attest: Edward F. Cullinane, Clerk pro tempore.

Be It Remembered, that, to-wit, on the 2nd day of August, 1943, the same being in vacation after the term of Court aforesaid, there was filed in said Court a Petition for an Order upon the Committee on Character and Fitness for the Third Appellate District to Certify Petitioner for Admission to the Bar of Illinois, and for an Order for Admission to the Practice of Law in the State of Illinois, in a cause entitled Non Record No. 462 In Re: Clyde Wilson Summers which said Petition is in the words and figures following, to-wit:

[fol. 1] IN THE SUPREME COURT OF ILLINOIS, JUNE TERM, A. D. 1943

CLYDE WILSON SUMMERS, Petitioner,

vs.

COMMITTEE ON CHARACTER AND FITNESS FOR THIRD APPELLATE DISTRICT, Respondent

Petition from the Refusal of the Committee on Character and Fitness to Sign a Favorable Certificate for Admission to the Bar

PETITION FOR AN ORDER UPON THE COMMITTEE ON CHARACTER AND FITNESS FOR THE THIRD APPELLATE DISTRICT TO CERTIFY PETITIONER FOR ADMISSION TO THE BAR OF ILLINOIS, AND FOR AN ORDER FOR ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF ILLINOIS—Filed August 2, 1943

To the Honorable Justices of the Supreme Court of Illinois:

Your petitioner, Clyde Wilson Summers, pursuant to the rules of this Court, prays that an Order may be entered

upon the Committee on Character and Fitness for the Third Appellate District of Illinois that petitioner be certified for admission to the Bar of Illinois. He further prays that an Order may be entered by this Court admitting petitioner to the practice of law in the State of Illinois.

Statement of the Case

Petitioner was in the month of June, 1942 a resident of the State of Illinois and of the County of Scott, which is located in the Third Appellate District of this state. Petitioner completed the required course of study of law and [fol. 2] was granted a decree from the College of Law of the University of Illinois at Champaign-Urbana. Upon payment of the required fee, petitioner was admitted and participated in the bar examination held under the supervision of the Board of Law Examiners of the State of Illinois in the month of June, 1942. Petitioner was informed by said Law Examiners that he received a passing grade; and thereupon on August 5, 1942 he filed his application together with the required affidavits for admission to the Bar of the State of Illinois.

Said Affidavits accompanying said application,—certified to by persons of standing,—stated that petitioner was of good moral character; that he was a fit person to practice law, as it will more fully appear from said affidavits heretofore filed with one Walter Bellatti, a member of the Committee on Character and Fitness for the Third Appellate District, (hereinafter referred to as the Committee).

At the time of the filing of said application for admission and affidavits, said Bellatti questioned applicant's fitness to practice law on the ground that applicant registered and has been classified as a conscientious objector to war, which registration and classification was in accordance with the *Selective Training and Service Act of 1940, 54 Stat. 885, Sec. 5 (G; 50 U. S. C. A. 305(G) 1942 Supp.)* Said Bellatti as a member of the Committee failed to pass upon petitioner's admissability to practice law because of petitioner's claim to be a conscientious objector to war. Later, however, petitioner was given an opportunity on November 27, 1942 to appear before the full Committee (with the exception of one Steely). The three members of the Committee present, that is the said Bellatti, one Garman and one Vail questioned petitioner concerning his religious beliefs and training, and particularly as to the thought processes

which led petitioner to become and to be a conscientious objector to war. The questions directed to petitioner and [fol. 3] his answers to said questions are contained in the Record (pages 1-63 thereof) which Record is attached hereto and as Record Exhibit A is made part of this Petition.

Upon the conclusion of the hearing, the three members of the Committee in the absence of the petitioner took the matter under advisement, and having failed to come to a conclusion as to petitioner's fitness to practice law, the said members decided that the Record of the hearing be submitted to the fourth member of the Committee, and upon such fourth member having read the transcript of record, a report be made and petitioner informed accordingly (Rec. p. 63).

On January 5, 1943 petitioner was informed that "now a majority of the Committee on Character and Fitness has declined to sign a favorable certificate as to your character and fitness for admission to the Bar" and petitioner was further informed that "in the absence of a certificate from our Committee to the Board of Bar Examiners, that Board will not certify you to the Supreme Court for admission to the Bar" which information is contained in Exhibit B hereto attached and made part of this Petition.

As Exhibit B discloses, no findings of the Committee in support of its decision were given. Petitioner attempted to obtain a reconsideration of the Committee's decision, but he was unsuccessful. He was also unsuccessful in obtaining an official statement as to the reasons for the findings of the Committee. However, one member of the Committee, who is also Secretary of the State Board of Law Examiners, expressed his personal opinion as to the reasons for the Committee's decision. This letter, which the petitioner publishes with acknowledgment of the graciousness of the writer thereof, is submitted for the purpose that this Court may have before it a statement as to the Committee's reasoning. The letter of the Secretary of the State Board of Law Examiners is hereto attached as Exhibit C and peti- [fol. 4] tioner's answer thereto as Exhibit C[1], and both are made part of this Petition. Said letter, Exhibit C, sets forth among others that:

> "The record establishes that you (petitioner) are a conscientious objector—also that your philosophical

beliefs go further. You eschew the use of force regardless of circumstances, but the law which you profess to embrace and which you teach and would practice is not an abstraction observed through mutual respect. It is real. It is the result of experience of man in an imperfect world, necessary we believe to restrain the strong and protect the weak. It recognizes the right even of the individual to use force under certain circumstances and commands the use of force to obtain its observance.

"Your conduct is governed by a higher law which we all hope may some day prevail. In the meantime most of us think chaos would prevail and civilization might be destroyed if the wolves are not kept at bay. Lawyers have the job of aiding in the administration and enforcement of the law,—all the law. What protection can the law be to the weak if lawyers do not consider its mandates to be entitled to obedience by force if necessary? Can a man conscientiously take an oath to support the Constitution and the laws, at the same time reserving the use of force from the meaning of "support".

"I do not argue against your religious beliefs or your philosophy of non-violence. My point is merely that your position seems inconsistent with the obligation of an attorney at law."

Said Exhibit C also acknowledged the receipt by the Committee of certain affidavits signed by various persons in support of petitioner's contention that he is morally fit and that therefore he ought to be certified and admitted to the practice of law in the State of Illinois.

Said affidavits are hereto attached as Exhibit D (Affidavit of Dean Harno of the University of Illinois, College of Law); Exhibit E (Affidavit of Dean Fornoff of the University of Toledo, College of Law); Exhibit F (Affidavit of Harold R. Clark, Lieutenant of the United States armed forces, at the present in North Africa); Exhibit G (Affidavit of Reverend Paul Burt, Minister of Trinity Methodist Church and Director of Wesley Foundation of the University of Illinois); Exhibit H (Affidavit of Max T. Fos-[fol. 5] ter, Sergeant of the United States Army); and Exhibit I (Affidavit of DeDanD A. Shinneman, President of Wesman and member of the United States Naval Reserves.)

Said affidavits D to I both inclusive are made part of this Petition.

Petitioner at this time refers to the transcript of record, which by itself discloses that the Committee based its decision on nothing but questions directed to and the answers given by petitioner concerning his religious beliefs and training, and concerning his being a conscientious objector to war.

As the record discloses, petitioner is twenty-four years of age, was born in Grass Range, Montana, where he lived for about three years, wherefrom he, with his family, moved to Nebraska, and that he was continuously a resident of the State of Illinois, County of Scott since 1929. (Rec. p. 2) He attended the University of Illinois, having received a Bachelor of Science in Accounting, and then entered upon the study of law. (Rec. p. 3) Petitioner is affiliated with the Methodist Church. While at the University of Illinois he did special religious work. Among others, he was with the Wesley Foundation as chairman of religious education, chairman of the Worship Committee, and President and Vice-President of the Council, and also a Student Assistant for the Minister (Rec. p. 3).

While at school petitioner led worship services. Petitioner worked his way through college and law school, the first four years at school worked on so-called meal jobs, then washing windows, running elevators, etc. (Rec. p. 3, 4) During the last three years in law school he worked in the University Accounting Office, two years in the University Accounting Office and one year in the Wesley Foundation. (Rec. p. 4) Petitioner's father is a farmer, and has one brother who is in the military service as a First Lieutenant in the Coast Artillery (Rec. p. 4).

Petitioner is not married, and registered in the first draft, having returned his question-aire stating that he is a conscientious objector to war and has maintained that position [fol. 6] ever since. The Draft Board classified him as a conscientious objector without ever questioning petitioner. (Rec. p. 4) This classification is 4-E. He took his physical examination, which he failed to pass, and in consequence he did not have to report to a conscientious objector camp (Rec. p. 5).

The Methodist Church, to which petitioner belongs, in its national conference declared that it would support the conscientious objector as well as conscientious participants in

the war. The church did not state that it is one of the fundamental tenets of religion, to take the position of conscientious objector, such as is the case of the Society of Friends (Rec. p 6).

Petitioner's position as to his conscientious objections to war is the result of his reasoning through religious training. The two cannot be separated. He did his own thinking, but in addition thereto had the religious influence, and his conscience is based on a religious point of view. It is not the result of family thinking (Rec. p 6). Petitioner does not believe that it is the duty of a just government to defend his life and property by military force. Even though it is the duty of the government to defend life and property, the petitioner sees no necessity to do so by armed force (Rec. p 7). He admits that Congress afforded him the right to claim an exemption or deferment on the ground of his conscientious objections to war. Congress protected his right even in the present great emergency. He believes that that kind of government is worth defending, but he questions whether defending it by force is a good defense, or the best kind of defense (Rec. p 7, 8).

Petitioner believes that if the civilization of the United States were overthrown and the Japanese or Hitler's ideas substituted therefor, the occurrence would hurt God greatly but he also believes that God is hurt greatly by people being killed. He does not believe that God desires that we should produce and use arms to prevent the overthrow of our civilization by the Japanese or by Hitler. God would [fol. 7] approve our failure to use arms if we used other means which we have available to defend our civilization. God does not approve anybody surrendering or giving in, but his approval is contingent on the means which we are using in our defense. The means which he believes are approved by God are non-violent resistence or non-cooperation, or using love to overcome evil. The best example of the latter one, according to petitioner's answer to the Committee members, is Ghandi (Rec. p 8). He does not believe, however, that such non-violent forces could prevent the initial overthrow, but he believes that such men would win in the end.

Petitioner does not believe in any force that requires the taking of human lives. He believes that even though our national existence initially would be injured by the triumph of our enemies, force and taking of human lives should not

be resorted to. He also believes that the period of darkness would disappear much quicker by using non-violence than the period of darkness existing during and following the use of force and taking of human lives (Rec. p. 9). Petitioner agrees with the Committee members that in case our enemies should be victorious, our liberties would be taken away as it was taken away in Germany, in Czechoslovakia and in Poland, but our people would be enslaved only to the extent that they allowed themselves to be enslaved. They can prevent from being enslaved otherwise than by use of force by simply refusing to follow the uncivilized forces, because the enslavement of people takes the form of the enslavement of the spirit and the willingness to put up with such enslavement, and does not come from the kind of enslavement we usually talk about by taking away one's liberties. As long as men are spiritually free they can never be slaves of anyone (Rec. 10).

Petitioner acknowledges that in case of such victory by our enemies his right to refuse to fight would be taken away [fol. 8] and he might suffer great consequences, in that he would have to suffer the violence exercised against him (Rec. p. 10). Petitioner believes that if everyone in the nation would have taken his position since Pearl Harbor his rights and freedom would be lost, but they would come back (Rec. p. 10).

Petitioner in his association at the University of Illinois made many acquaintances, many of them his best friends are now fighting with the armed forces, probably in Africa. His conscience does not make him feel that he ought to be fighting side by side with them. In case he were to be asked by his friends to fight with them he would continue what he thought was right (Rec. p. 10, 11). Petitioner's best friend, who may be in Africa, is Harold Clark. He graduated in law a year before petitioner. If this friend would ask him to join in the fight petitioner would continue doing what he is doing now as nearly as he is able to do it. If in his presence one of his friends were to be attacked by a superior foe, petitioner would be willing to take the blows that were meant for his friend. He would put himself between his friend and the foe. That effort, petitioner considers, is all that he could do. If it would be practical to take away the gun from the foe petitioner would do that, in which case he would be using restraint and not destruction. If in the struggle to get the gun or protect

a friend the point would be reached where it became a question of the life of the petitioner and of his friend or that of the foe, he would be willing to sacrifice his own life (Rec. p. 11, 12). Thereupon Committee Member Garman asked the following questions:

"Q. And your friend's life too rather than take the life of the foe?

A. Yes. But what has that to do with practicing law?

Mr. Vail: You are here to answer questions. Not to ask them.

Mr. Garman: Well, let us talk about law a little bit.

Q. In the practice of law it sometimes becomes necessary to use force, doesn't it?

[fol. 9] A. That is a police force—not military force.

Q. What is the difference between them?

A. One is bent on restraining people and prevention, and the other is bent upon destruction. One is bent on restraining violence, saving people who have committed crime and not to kill them off.

Q. Sometimes in the enforcement of the law, a mob attacks a jail, doesn't it?

A. Yes.

Q. Now call it police power or military power, whatever you will, it is the duty of the jailer to protect the prisoners, isn't it?

A. Yes, it is.

Q. Isn't it his duty to protect them even though he must injure some of the people who are bent on the attack?

A. Yes, he has assumed that duty.

Q. That is a part of our system, isn't it?

A. A part of our feeling, yes.

Q. A part of our system of law, isn't it?

A. Yes.

Q. Now, that is the system of law that you wish and are willing to take an oath to support, isn't it?

A. Yes.

Q. And you recognize the fact that sometimes it is incumbent upon us in the administration of that law to use force and sometimes to take life? Don't you know that? And as a citizen of this country that you can be

called upon to assume police power, even involuntarily, under certain conditions?

A. Yes.

Q. And isn't it a part of our system that you should do so?

A. Yes, sir. It does not necessarily mean to kill a man.

Q. It might.

A. I would go as far as I could, but when it came to killing a man I could not do it.

Q. You would let the men rush the jail and take the prisoner out and hang him rather than do it.

A. They would have to hang me first.

[fol. 10] "Q. It is not necessary to kill you. The man is in jail.

A. It would be as the old saying is, "over my dead body."

Q. He ties you, walks past you, takes the keys and takes the prisoner out and hangs him. You would go Scott Free?

A. Yes.

Q. Well, that is so obvious, Mr. Summers.

A. But it would be a case of keeping myself in a position where they could not do it. It would be a case of my own life, it would be a case of throwing the keys away or whatever is necessary. Of course, then, there are spiritual forces. Again love. Some of the missionaries in China have proved them against the Japanese. They have been able to stand for every violence and fighting back there. (Rec. 12, 13, 14)

Petitioner, in talking about combating a foe, had in mind the method of non-violent resistence. That means that when one opposes a certain thing, be it force or otherwise, one refuses to cooperate. To hold one's self ready to correct it, assuming the blame for which one is responsible, refusing to hate those who are using force against one, and in refusing to hate, the method become effective. (Rec. p. 17) Under the present conditions, petitioner would suggest to do what he is doing, standing for his principles, even though the rest of the people are not willing to go along. Various people are now going along—knowing no other way they must fight. If it be assumed that the whole country believed as petitioner does, it would be a case of not relying on the

military. Rather it would be the case of making the food of the country available to the hungry. It would be the case of bearing the responsibility for the creation of this war, and willingness to assume that responsibility and correct the conditions to what one think they ought to be. Such methods amount to resistance, the most forceful kind of resistence, to any forces that are against us. And in that way the present conditions could be corrected. It would [fol. 11] be using spiritual force against our foe. It would be using prayer, love, good-will and friendship regardless of how the other man treated you. Petitioner would use this non-violent resistence even though that might disintegrate the whole nation to the last man, but he does not believe that it would.

These are the petitioner's own ideas and not the teachings of his church, though there are a large number in his church that believe the same way that he does. His church took both sides, but it is the teaching of Methodists like Earnest Fremont Tittle. There are many things the Methodist Church stands for that are not in the creed. They stand for those things which as a unit they adopt in their conferences every four years as their policy. His church never adopted a policy of non-resistance, but the conference said that such non-resistence is a valid method of the church. It didn't adopt it as a policy of the church but it didn't adopt a policy of war either. (Rec. p. 16-19) The Doctrines of the Church adopted in 1940 set forth:

> "Believing in the long run that any people have far more to gain by cherishing freedom of conscience than by any regimentation that takes away freedom, and that conscientious objection to war is a natural outgrowth of Christian desire for peace on earth, we ask and claim exemption from all forms of military preparation or service for all conscientious objectors who may be members of the Methodist Church. Those of our members who as conscientious objectors seek exemption from military training in schools and colleges or from military service anywhere at any time, have the authority and support of their church. Section 1716, page 778."

Petitioner would not advocate against the foe such methods as a food blockade. He rather would feed the hungry

people of the foe; he would feed them even though they might be in the army.

Questions by Committee Member Garman:

"Q. We know today that the German people are badly underfed.

A. Not as badly as the rest of Europe.

Q. Just answer my question, Mr. Summers. We will get along much faster I really imagine.

[fol. 12] A. I can already feel like you are trying to force me into a hole without a full statement of what the conditions are.

Q. No, you have an opportunity to state everything you want to state, but we would like to know.

A. Very well. I will save it until then. I just wanted to know and be sure my position is clear, that I am not put in a hole.

Q. The point is, you would feed the German people, including the German Army?

A. Yes, sir.

Q. The Japanese as well?

A. Yes, sir.

Q. And your theory being that if you feed them they might relent and lay down their arms and be Brothers?

A. Eventually yes. That with other things I mean. Feeding alone is not enough." (Rec. p. 20)

Petitioner knows that the legal system now in force in Germany is different from our own, and he considers it very bad. He would not submit to it, but he would not use violence.

"Q. You would not use violence to protect the legal system you have?

A. No, sir.

Q. You do not feel that the Common Law under which we live is worth defending by force?

A. It is worth defending by force, but the force will not work.

Q. That is it won't work over a long period of time?

A. It is worth everything we can give.

Q. It won't work you think over a long period of time?

A. That is right.

Q. We might defeat our foes and preserve our system, but that would not be worth while?

A. Not if it meant losing—it would not be worth while because it would mean losing them eventually or injuring them again eventually." (Rec. p. 21)

[fol. 13] Petitioner stated that he is willing to follow the course outlined by him in answering the questions of the Committee members, and he is willing to do so regardless of the consequences.

"Q. A very substantial number of lawyers you know, lawyers and law teachers, are today actively fighting. They fight to protect and to preserve our way of life?

A. Yes.

Q. And our institutions in this country?

A. Yes.

Q. They have sacrificed their jobs and their property to do that. Now, is it selfish or not for a man who refuses to fight to step into the place of those who has gone to fight.

A. I am getting two hundred dollars a month. I am saving one hundred dollars of it in order to pay my expenses when I go to Camp. I do not think that is being too selfish.

Q. It is a little bit selfish, isn't it.

A. I have no other choice than to go to Camp, and then I would be a burden on those behind me. I have no other source except to support myself. (Rec. pp. 22, 23.)

Petitioner has read a great deal on the question of pacifism, including Gregg's "Power of Non-violence" and Macgregor's "New Testament Basis of Pacifism", Fellowship magazines put out by the Fellowship of Reconciliation, a number of articles in the Christian Century, and Kirby Page's Books. He has read practically everything he could get his hands on. All writers of the books mentioned by petitioner advocate non-violence. That was the thesis of Kirby Page, but petitioner does not know whether or not it is his thesis today. If he were to be informed that Page changed his position, that would not make any difference to petitioner as far as his approach to war is concerned. If all the authors were to change their position in the light of the present conditions, petitioner would certainly look into

his own position, but he could not say with what result. Whenever an issue came up, petitioner looked at it and examined it as much as he could to determine whether or [fol. 14] not he was right or wrong on that point. Petitioner does not resolve his doubts in favor of non-violence, but non-violence overcomes all doubts. He admits that he may be wrong, but it is the best as he sees it now. Six months before he took his position he thought that war was thoroughly justified. Before he changed his position he did not go to church regularly. When he started to go to church regularly it helped bring about the change because it made him think. In the second place he went home in the summer time and had lots of time to think. He read the Four Gospels probably a little too much. He was just compelled to come to his present conclusion. He had no other choice. (Rec. p. 25) He believed that the New Testament is enough authority, because there are parts therein like "Love your enemies," "Do good to those that hate you", "Even though your enemy strike you on your right cheek, turn to him your left cheek also", which are convincing in themselves. Last but not least the example of the Man that died on the Cross because he refused to use force was a compelling argument. There are a few things in the New Testament that caused petitioner some doubts. One of them is Jesus using cords on cattle and driving them out of the temple. Such things bothered him but they were totally overcome by his new way to live, because he read and investigated, and found firstly that the incident is not particularly reliable as reported, and that secondly Jesus used the cords on cattle. Thirdly it was a perfect example of non-violence because Jesus as one person stood against a while mob and the mob obeyed. Jesus did not drive the money changers out of the temple. He drove the cattle out. That is as far as he would go. While petitioner cannot quote the Bible exactly, the Greek translation says that Jesus used the cords on the cattle and since the incident is reported only in the Gospel of John and does not appear in any of the other three, it is a question as to whether Jesus really did it. It says that "He cast them out", but [fol. 15] in Greek translation that means "He cast them forth." Petitioner did not ignore the Old Testament entirely. It is a history of a people learning to know their God. It is a history of their growth and knowledge of what is right and wrong. And Jesus was the fulfillment of that.

(Rec. p. 27) Jesus was the fulfillment of that struggle that these people went through, even sometimes resulting in the engagement of violent war, but when Jesus came He said not to do it that way. He said, "You have heard that old time saying, an eye for an eye and a tooth for a tooth, but I say a man who is angry with his Brother is in danger of Hell fire." (Rec. p. 28)

Petitioner rejects the reports and teachings of the Old Testament which would support violence in the sense that it is not the best life a man could have. It was what those men believed to be right at that time. (Rec. p. 28)

Questions by Mr. Vail:

"Q. Now if it were suggested by the Board, the Draft Board, that since you are a conscientious objector, you go into the Hospital Service and not carry any arms, but help carry the wounded men off the field, help care for them, would you willingly do that?

A. As long as I was not subject to the military authorities. The Quakers are doing that kind of work, are trying to, if the Government would let them. I would be perfectly willing to do it under them.

Q. What is your objection to doing it under the military authorities, if you do not have to fight?

A. I think the whole military system is wrong. I would prefer not to have a part in it.

Q. You would be unwilling then, under military authority, where you did not have to bear arms, to help carry the wounded off and serve in the hospitals?

A. I am afraid so, but it is not because I do not feel for those people.

Q. Why would it be? You do not want to do it?

A. Because I do not want to do it under military authority * * * which is a machine aimed at the destruction of other people.

[fol. 16] Q. You are willing to refuse to save life because somebody may connect you with somebody that takes life?

A. There are other ways of saving.

Q. Answer my question.

A. I do not mean foregoing the saving of life, but I do not want to be a part of something that is the cause of destruction.

Q. Suppose you were married and walked down the street and some bully came and started to beat up on your wife, what would you do?

A. Take the punishment myself.

Q. He jumped on her, what would you do? Interfere?

A. Put myself between them.

Q. Is that all you would do?

A. I would do that, that is the most I could do.

Q. That is the most you could do?

A. I could absorb all of the punishment myself and that is enough.

Q. You would let your wife take what violence came to her when you could prevent it?

A. She could get away while he was beating me up.

Q. Suppose you had a child and a wife and some fellow came around your house with a revolver and threatened to shoot. What would you do? Just stand in the way and be shot?

A. That would be one way.

Q. Would you do that?

A. Certainly.

Q. ——.

Q. If you had a brick in your hand, do you think you would throw it at him?

A. I do not think Jesus would want me to do that.

Q. I did not ask you about Jesus. I am talking about you.

A. I would try not to do it.

Q. You would let him shoot your wife rather than throw the brick to save your wife and your child? You would let him shoot your wife and your child rather than throw the brick?

A. Yes, because I believe that is what Jesus asks for me to do.

[fol. 17] Q. Do you know you would be an officer of the Court if you were admitted to the bar?

A. Yes, sir.

Q. Suppose you were appointed to defend someone who is indicted for murder?

A. I would defend him.

Q. And his defense was self-defense, even though he was a man——

A. I would have no duty but to say that is what the law provided. I would defend him as the law provides.

Q. You would do that even though you did not believe it?

A. Certainly" (Rec. p. 30-32).

Petitioner was reading the work of the writers concerning non-violence and pacifism nearly four and one-half years. He read book on the opposite side too. He read the book "Moral Man, Immoral Society" by Rheinhold Niebbur.

"Q. He is a communist?

A. No, he is a minister.

Q. Didn't you know he was a communist?

A. I never heard of it—not Niehbur.

Q. Did you read any of his books on Russia?

A. No sir, I have not.

Q. Do you know whether he wrote about Russia or not?

A. I do not know of anything if he did.

Q. Do you believe in Hell?

A. Can a man help but believe in what is going on" (Rec. p. 33).

Petitioner read books on evolution, he studied Darwin and Huxley. He read about other religions than the Christian. He believes, in so far as he is able to understand it, implicitly in the New Testament. He read the Four Gospels and he knows there are a lot of variances and differences. He read the St. James version and the versions of Goodspeed, Moffat and Weymouth. He also read about Confucianism, Hinduism, Mohammedanism and Hebrew (Rec. p. 35).

[fol. 18] Petitioner cannot separate the picture of Jesus as a whole, the things that he said, and what he meant by His way of life from that of the doctrines of the New Testament in relying and accepting a document for his belief in non-resistence. He believes in the survival of the fittest, but the fittest are not those who are physically fit, but those who are spiritually fit. They never die. Jesus taught that idea too.

Petitioner, as he stated, does not believe in physical survival after death, but he thinks that people that do good, the good lives after them. The greatest example of non-resistence is Christ, and He is the Man that survived the

longest. He is still alive in thousands of Churches, that is what petitioner meant by survival, that He lives in the hearts of men. Christ in two thousand years had influenced men, and in the sense that He still works, and that He still lives, is what he understands as life after death (Rec. p. 36; 37).

At Champaign the Wesley Foundation sent out some extension teams to churches in the state. Petitioner preached at Kansas, Illinois, and in other little towns close by there. He preached in Peoria and he preached at home in his own church the day war was declared. Two summers he spent with a group in New York. It was an inter-religion, inter-faith and inter-racial group and the participants were sent out to churches every week to preach. Petitioner spoke fifteen or twenty sermons in different regions and churches during the two summers. Some of the subjects of his sermons were "World Brotherhood", "World Minded", "The Meaning of Nations", "The Purpose of Christ in the Lives of Young People". Some of his sermons touched on non-resistence. As a matter of fact he remembers only one sermon specifically on the subject. Questions by Mr. Vail:

"Q. Mr. Summers, is there any question in your mind as to whether you were cut out for a preacher or music teacher rather than a lawyer?

A. Sometimes I very seriously consider going into the ministry. The fact is I considered it through most of two years of my schooling.

[fol. 19] Q. Why did you change your mind?

A. Because I felt there were enough religious people in the churches—I mean the ministry. I think there is a lot of work to be done in the law.

Q. Do you expect to use the law as a vehicle for the extension of your ideas?

A. That is not my purpose in law, just as a means of getting at these things, but when the situation has come up in law that my principles guide me, I will follow them, whether it is in relation to non-violence or not. There is a lot of religion other than non-violence. I think there is work that needs to be done. A lot of prison reform that needs to be done. I think it is unChristian the kind of prisons we have. I think there are a lot of other things that perhaps the law has a place to do.

I think the law has a place to see to it that every man has a chance to eat and a chance to live equally. I think the law has a place where people can go and get justice done for themselves without paying too much, for the bulk of the people that are too poor. I have been particularly interested in the legal clinics that have been set up in different places. In fact, I do not know too much about it. It is in the right direction.

I think in law if I did not do anything else I might get a few more people to settle things without going to Court just to get together as friends, because my experience has been when people * * * start suing each other in Court they are mad at each other and do not understand each other and have not made an honest effort to get together * * * I have something to offer in that because I believe in settling it peacefully and settling it on terms of friendship and understanding rather than going through court. If there is no other way to obtain justice, and that is what the courts are for, but it seems to me that the lawyers main job or one of the main jobs is to try to get people to work things out peacefully and nice. That antagonism must necessarily grow out of a law suit, and you know it better than I do, but people feel madder after a lawsuit then they did before the lawsuit. Lawsuits do not bring love and brotherliness, they just create antagonism.

Q. Would it be your effort to eliminate all litigation possible if you were admitted to the Bar?

A. All that is possible to do without sacrificing the client's interest. A man cannot do that. I mean he is intrusted with that. Of course, a man cannot play two sides of the fence. He cannot act as attorney for both parties. I know that. And yet if there is an opportunity to get both lawyers together and the parties together and sit down and talk it over and settle it peacefully, he should do that.

[fol. 20] Q. Suppose you had a client that asked you to represent him, to become his advocate, and his ideas of what he was entitled to and yours did not correspond. He wanted to go ahead in a claim within his legal rights. What would you do?

A. If it was a criminal case, of course I would be bound to take it and get as much justice as I could . . . If it was a civil suit, and if the conflict were not too great, I think I would just tell him that my own personal feelings just made it impossible for me to do a fair job to represent his claims. I think perhaps that is about as good as I could do." (Rec. pp. 38-40)

Questions by Mr. Bellatti:

"Q. About the distinction you made about the compulsion and without force in connection with the administration of justice, aren't you just as connected with the law, in their law enforcement agency, by being a member of the Bar as you would be connected with the military forces if you were in the hospital service, even under military directon?

A. Just as much? I mean the relationship is just the same, but the difference it seems to me lies in this: That the object of the police force is to restrain and reclaim people, and that is not the object of the military force.

. . . . . .

Q. Could not the effort of the military authorities be used to restrain our enemies even if they have to kill them?

A. There is certainly no effort to reclaim them . . . I mean to try to make them decent people again, and it seems to me another distinction when you are dealing with criminals, you are dealing with somebody as an individual. At least to a certain extent they have been responsible for where they are, but there are a lot of boys that are fighting for the Germans, the Italians and the Japanese that do not want to fight any more than we do. They do not want to kill us any more than we want to kill them. They do it because they think they have to.

Q. But a police power may be required to kill people in order to restrain them?

A. I do not know whether it is done or not. It is done but insofar as it does, it fails to live up to the highest ideals.

Q. And yet you would not object to being connected with the administration of justice where that is frequently done?

A. I am not connected quite in the same way." (Rec. pp. 42, 43)

Petitioner believes that it is necessary to have organized government, but he does not believe that the government [fol. 21] should support itself by military force. Organized government in the face of a foe should offer resistance, but not military violent resistance. Individuals themselves should not offer violent resistence. If an invasion occurred within the confines of a territory controlled by an organized government, people would do wrong to resist such invasion with force. They would be bound to resist, but it would be non-violent resistence by prayer and by good will and by absorbing the punishment. There is no choice there. In case of invasion of our country we would all be under the obligation to put ourselves in the service to help in the non-violent resistence. He believes that would work. (Rec. pp. 43, 44)

The Minister of the Methodist Church at Urbana is Paul Burt. Petitioner talked to him about the question of non-resist*ance*. He is sympathetic to his point of view. Petitioner counselled with other people on the subject, as for instance with Roy Hendricks, a student assistant at Wesley, about 26 years of age. In June, 1941 he consulted with Harold Fey, a pacifist and a believer in non-resistence, and the editor of the Christian Century. He talked to Kirby Page once in 1938 and once in June, 1939 and once in the spring of 1941, but not since the war was declared in this country. Since the declaration of war he talked to Reverend Burt. There are dozens of people whom petitioner heard make speeches on the subject but he did not ask them questions. He talked in 1939 to A. J. Musty, who is the head of the Fellowship of Reconciliation. The Fellowship of Reconciliation is a Christian Pacifist Organization. Petitioner also talked to DeWitt Baldwin. He was the one who was in charge of the group petitioner was with in New York, and is Student Secretary of the Methodist Board of Missions. Petitioner was with the group in New York called the Lisle Fellowship, that is an inter-racial and inter-faith organization mainly supported by the Methodist Board of Missions. The group as a whole does not believe in non-resistence, it was split up half and half (Rec. p. 47).

[fol. 22] Petitioner also talked to people who did not share his views on non-resistence for the purpose of obtaining

their advice. He talked to Colonel Brown of the University R.O.T.C. in the fall of 1938. He talked to him two or three times. Petitioner had two years of basic military training in the R.O.T.C. At the time he took this course he did not believe in non-resistence, but changed his mind after he was out of military. If he would have felt as he does now he wouldn't have participated in the R.O.T.C. Petitioner talked to Colonel Brown to get his view-point on the values of the R.O.T.C., its purpose, and objectives, how much they were doing, and how much it cost, and he gave material to petitioner or that. Colonel Brown knew petitioner's position. Petitioner's Dad talked to him a lot about this problem, and definitely disagrees with petitioner. He also talked to Henry Wilson, the General Secretary of the Y.M.C.A., while working on inter-religious things. He also talked to John Bennett. While talking to these people both sides were listening fair mindedly, but the petitioner states that he made up his mind when nobody was around, but he feels that he has talked with enough people and he has adequate information on which to base his conclusions.

Questions by Mr. Garman:

"Q. And it is your opinion that an oath to support the Constitution of the United States would not oblige you to use any force at any time?

A. Military violent force.

Q. Or police force or individual physical force?

A. Yes.

Q. I cannot understand the distinction between military force and other force.

A. In the military you kill innocent people and in the other case you get the criminal" (Rec. p. 49).

Petitioner distinguishes between raiders who may come across the border of Texas to raid the farmer's cattle and those who raided Pearl Harbor. Petitioner thinks that [fol. 23] the first are criminals and others are not. Those who are criminals do things of their own volition, but the Japanese soldiers did what they were ordered to do. The soldiers did the work because they thought they had to, for the same reason that a lot of boys are in the Army now, not because they believe in it but because they have to. They feel that it is expected of them and they do not see any other way (Rec. p. 50).

Questions by Mr. Bellatti:

"Q. Now his choice to go into the Army you think makes him a criminal?

A. No, no, a thousand times no. These people that are fighting are not criminals.

Q. He is going to kill people.

A. He is helpless in it.

Q. No, he is not. You just stated he has some freedom to choose.

A. He has to regardless. You are twisting my words. I do not think boys in the Army are criminals. They are a decent bunch of fellows, doing what they think is right. That is what I am trying to do. They are decent guys and they do not want to kill people either.

Q. Now let's get down to brass tacks. They kill people?

A. But we are all the ones that send them to kill them.

Q. We all send them, you and all of us?

A. Yes.

Q. So as a part of organized government we send them out to kill?

A. Yes, and we are all guilty.

Q. And we are going to reap the benefit of their victory, aren't we?

A. If there are benefits.

Q. And we will label them as transgressors against the will of God, but we will accept the benefits of their transgressions, won't we?

A. What Jesus said about lawyers in his day. He says "You strain on the gnat and swallow a camel." But these boys—can't—you see they are decent—they are doing the best they know and they are going it because they see it for them. It is the only thing they can do. I do not think God is going to be very hard on them" (Rec. p. 50, 51).

[fol. 24] The University of Toledo authorities for whom petitioner is teaching know that he is a conscientious objector. They knew it before they hired him. To obtain the teaching position it was not necessary for petitioner to

be admitted to the practice of law. So far as he knows he could go on teaching without being admitted to practice.

Questions by Mr. Vail:

> "Q. Suppose, Mr. Summers, that the law your being exempted as a conscientious objector, were repealed by Congress, so that there were not exceptions made, what would you do?
>
> A. The first situation is the situation that has been presented to me. I do not know for sure what my reactions would be, because I had a certain kind of reaction to the First Draft that I did not understand, that I did not expect, so I do not know what I would do in that case, but so far as I see now, I simply could only say, I am willing to do constructive work, but I would not be a part of the Army. I cannot help what the consequences were any more than if Congress passed a law that every man was compelled to kill his neighbor's dog. I would not obey that law. And if the Government insisted, I would take the consequence. I would rather trust in the Sermon on the Mount" (Rec. p 52, 53).

Petitioner would rather do what he believes is right than do what he is pretty certain is wrong. He would consent to being a prosecuting attorney, but he would not ask the death penalty in a murder case, even though the statute authorized him as it does not require it. If it would be the only way for a man for getting bread for himself and his family by garnishing his wages, petitioner would rather pay the judgment than to garnish his wages and take from him and his family the sustenence upon which they depend for life. If a man would fail to pay his rent there would be nothing else left for petitioner but to evict him from his home. But if there were no houses available and there would be no place for him to go, petitioner would not send him out to the street to freeze and starve. They would just have to go to another lawyer to do those things. Petitioner would assume the obligation to tell his clients that his conscience would not let him do those things. They would have to find some other lawyer who didn't feel the same way. [fol. 25] That would be far better than taking the case when petitioner thought it was wrong, because he is afraid that if

he started to do something that was wrong he would not be as good a person as the petitioner thinks he should be. It would not be fair to his client.

Question by Mr. Garman:

> "Q. Aren't these notions you express here rather difficult for a man to hold in practicing law?
>
> A. It is just a question to hold and live. In practicing law it is not harder than fighting for anything else as I see it" (Rec. p 54).

Petitioner talked to some lawyers about the practice of law and their methods of handling law suits and litigations of their clients. From the impression so obtained, petitioner does not believe that the legal profession as a whole is a monetized outfit. He does not believe that lawyers strive on litigation and trouble. He believes that the greater proportion of lawyers are doing the very best they can. He knows some lawyers that are just about as fine a people as he ever knew. He would not want to say that most of the lawyers do not share his own ideas, but he rather would say that the lawyers are not particularly motivated in practicing law by trying to achieve those ends, the ends petitioner wants to achieve. Most lawyers never do anything wrong. They do the right thing as they see it, but there is a difference between doing the right thing as you see it when it comes to you and attempting to build something new (Rec. p 55).

Petitioner didn't have any dates with girls the first three years at school for the reason that he didn't have the money and had less time. After that the last couple of years he had quite a number of dates. He bowls, plays baseball and softball. He played football until he got big enough and his Dad was afraid he was going to get hurt. His recreation in school was playing handball, boxing, tennis, swimming, running, fumbling and folk games. He didn't participate in group activities because he could not arrange the time, though he liked group activities. He can hold his own in boxing, but he would not use his fistic ability to preserve [fol. 26] order or decorum or prevent any harm or evil that might befall an innocent person. Since he adopted nonresistant position there were one or two cases when someone struck him. Other people threatened him but he didn't offer to fight. If they had struck him he would have taken it

or walked out as quickly as he could. He would stay out of the way of an ag-ressor until he cooled off. If he thought that was than just a flair of temper he would not run, but if it was a flair of temper he would go off, for the ag-ressor is generally sorry enough, and there is no use making him sore sorry. If an ag-ressor wanted to beat petitioner up he would let him do the beating (Rec. p 56, 57).

Questions by Mr. Vail:

"Q. Mr. Summers, I do not think you would.

A. Maybe I would not, but if I did otherwise I would feel remorseful afterwards.

Q. Well, isn't it perfectly possible for us to use force righteously and feel sorry we have to do those things and ask for forgiveness for every blow that we dealt?

A. Well, there is a lot of good men that think so, and there are a lot of people even in churches, there are a lot of Methodists that feel that way about it, but I do not. I feel that God is going to look a little skeptical when we stab a man with our bayonet and then say, "Lord forgive us."

Q. Even though that man was about to stab you?

A. I am afraid so. Jesus said "Put up your sword." That is what He said. We never try to defend. Put up your sword else they will take you.

Q. He was trying to impress upon them a great moral teaching, wasn't He?

A. Yes, that I will do the best I can.

Q. And He was in a position to do that?

A. Yes. And Maybe I am." (Rec. p. 57, 58)

Petitioner about eleven years ago, together with his brother, had some wild grape wine his Dad didn't know anything about at that time. They had a couple of glasses before the wine spoiled. Outside of that petitioner never took a drink, but is a prohibitionist by practice. He does not smoke. He does not engage in social dancing, not because he doesn't believe in it, but he does not function that way. [fol. 27] He played poker just once while a freshman in college, but since that time he has not. He does not play bridge, never took the trouble to learn. He used to play checkers and chess. (Rec. p. 59)

Petitioner stated to the members of the Committee substantially as follows: He realizes that his position is from

a religious standpoint on which a lot of people have differences of opinion. He would not anymore want to ask them to do his bidding when he believed otherwise than for them to ask petitioner to do otherwise. That is the first position. The second of his positions is that the teachings he had gives him no other alternative. For the first three centuries every Christian was a pacifist. That was the sensitive point of Christianity, because one could not bear the Cross of Jesus and bear the sword of the state. You either followed the Cross or the state. Those who followed the Cross refused military service for three long centuries. Augustine was the first one that let them down. (Rec. p. 60)

Petitioner was frankly amazed to run into the difficulties with the Committee on Character and Fitness. And the more he thinks the more he is amazed because the Illinois Constitution says that a man is not required to do military duty in times of peace. The case of *In re Sullivan* is not distinguishable from petitioner's position, because of religious issues. There is a conscientious objector camp with five lawyers in it, and a member of the New Hampshire Bar, who is a conscientious objector, is the director of that camp. Petitioner was hired to teach law. It was known that he was a conscientious objector, but the Dean and President of the College, who is all out for war and a member of the Draft Board, felt it made no difference. Petitioner talked to Dean Harno about his difficulties with the Committee and asked him what he should do. He said he didn't see why there should be any difficulties. (Rec. p. 61, 62)

Petitioner could find only one case of a conscientious objector's admission to the Bar. He was not a religious [fol. 28] objector and he was admitted. Petitioner believes that the case pertaining to the conscientious objector has a bearing on his case. However, he maintains that with his life he will stick to his position because it is right. He has no other choice.

The Material Issue

The Committee on Character and Fitness having decided not to certify petitioner to the Board of Law Examiners, and having so decided without filing its findings of facts, it is maintained that the Committee acted contrary to law and contrary to due process of law.

The record clearly discloses that the Committee on Character and Fitness refused to certify petitioner on the sole ground that he is a conscientious objector to war. Such an action of the Committee is not justified nor supported either by law or equity, and it ought to be ordered by the Court to certify petitioner and thus permit him to be admitted to the Bar of the State of Illinois.

Petitioner being a conscientious objector to war because of his religious training and belief cannot and ought not be excluded from the practice of law, a profession chosen by him, for the practice of which he duly qualified under the laws of the State of Illinois.

The Contention of Your Petitioner

Your petitioner maintains that the Committee on Character and Fitness acted contrary to law and equity, and its action is capricious and not in accord with the due process of law under which petitioner, after having qualified under the law to become a member of the Bar, ought to be admitted to the practice of law.

The Essential Facts

Petitioner has complied with all the requirements of the rules governing admission to the Bar, except as to the [fol. 29] production of a certificate from the Committee on Character and Fitness. Petitioner proved by affidavits heretofore submitted to the Committee that he is a person of good moral character and reputation. In compliance with a notice from the Committee, he appeared before it, and the Committee had refused to grant him the certificate required by the rules, stating no reason for such refusal. In the absence of such reasons and in view of the fact that petitioner has complied with all the requirements for the admission to the Bar, it is presumed on the basis of the Record that the only reason for such a refusal to certify him is petitioner's statement that he is a conscientious objector opposed to war. This presumption is justified in view of the fact that the major part of the questions asked the petitioner was devoted to the religious beliefs and social philosophy of the petitioner, and to petitioner's convictions concerning his participation in war.

The fundamental issue is whether the Committee acted fairly and reasonably in its refusal to certify the petitioner

and whether the adverse recommendations of the Committee is based on sound premises and valid reasoning.

[fol. 30] POINTS AND AUTHORITIES RELIED UPON

I

The power to prescribe the qualifications which entitle an applicant to be admitted to the Bar is a judicial one.

People ex rel. Illinois State Bar Association v. Peoples Stock Yards State Bank, 344 Ill. 462, 176 N. E. 901.
Ex parte Garland, 71 U. S. 333 (1866).
People v. Amos, 246 Ill. 299, 92 N. E. 857.
In re Crum, 103 Ore. 296, 204 P. 948.
Elite Dairy Products v. Ten Eyck, 271 N. Y. 488, 2 N. D. 906.
Saginaw Broadcasting Co. v. Federal Communications Commission, 96 F(2d) 554.
Ex parte Secombe, 12 How. 9.
People v. McCabe, 18 Cal. 186, 32 P. 280.

II

The Statute of the State of Illinois enumerates the qualifications required for a person to be admitted to the Bar. The Committee acting under the law must exercise its powers with sound discretion, that in failing to do so the Court will review the action of the Committee.

Illinois Revised Statutes (1941), Paragraph 259.58, Chapter 110.
In re Frank, 293 Ill. 263, 197 N. E. 640.
In re Crum, 103 Ore. 296, 204 P. 948.
In re Stepsay, 98 P(2d), 489.

III

The Committee on Character and Fitness has certain powers delegated to it. Such powers, even though they are discretionary, are not absolute, and they cannot be exercised arbitrarily, but must be applied in fairness without bias or prejudice.

Ex parte Garland, 71 U. S. 333 (1866).
[fol. 31] Ex parte Secombe, 12 How. 9.

Warbasse v. State Bar, 209 Cal. 566, 571, 28 P(2d) 19.
People v. McCabe, 18 Colo. 186, 32 P. 280.
In re Crum, 103 Ore. 296, 204 P. 948.
Re Day, 181 Ill., 73, 90.
People ex rel, Chicago Bar Association v. Amos.
People v. Czarnecki, 268 Ill. 278, 109 N. E. 14.
In re Attorney's License, 21 N. J. L. 345.
People v. Pace, 354 Ill 111.

IV

The Congress of the United States by adopting the Selective Service Act and giving consideration to those who because of "religious training and belief" are unable to bear arms, took the stigma from the conscientious objectors to war. An objection to war is neither a legal offense nor is it an immoral position which would disqualify a person the practice of law.

50 U. S. C. A. 204 (1917).
50 U. S. C. A. 305 (1941).
Rase v. U. S., 129 F(2d) 204.
In re Sullivan, 57 Mont. 592, 189 P. 770.
G. H. C. Macgregor, The New Testament Basis of Pacifism (1936), p. 126.
Sermon on the Mount, Matthew 5:1 to 7:28.
M. E. Hirst, Quakers in Peace and War (1930), pp. 156, 187, 225-240, 337, 349, 400, 419, 426, 509.
M. R. Brailsford, A Quaker from Cromwell's Army (1927), pp. 29, 53.
Sidney Fisher, The Quaker Colonies (1921), p. 23.
Isaac Sharpless, Two Centuries of Pennsylvania History (1900), p. 12.
Official Action of Methodist Church.
The Reporter (Official publication of the National Service Board for Religious Objectors which has charge of administration of the conscientious objector camps), April 15, 1943.
[fol. 32] Paul Gia Russo, History of Religious Pacifism in American Law (1938).
Law of Virginia (1778), 10 Henning, 334.5.
Georgia, Act of August 5, 1782, *Colonial Records*, vol. 9, pt. 2, p. 155.
13 Stat. 6, Sec. 17 (1864).
40 Stat. 76, Sec. 4 (1917).

54 Stat. 885, Sec. 5(g), 50 U. S. C. A. 305 (g) (1942 Supp.).
William Penn, *The Peace of Europe.*
Hirst, supra, pp. 156, 356-72.
Sharpless, supra, pp. 71, 75, 81.
Whittier, "Anniversary Poem" from *Poems In War Time* (1863) (John Greenleaf Whittier).
U. S. v. Schwimmer, 194, U. S. 644, 49 S. Ct. 448 (1929).
U. S. v. Macintosh, 283, U. S. 605, 51 S. Ct. 570 (1931).
U. S. v. Williams, 194 U. S. 279, 24 S. Ct. 719 (1904).
U. S. v. Sing Tuck, 194 U. S. 161, 24 S. Ct. 621 (1904).
U. S. v. Ju Toy, 198 U. S. 253, 25 S. Ct. 644 (1905).
Tutin v. U. S., 270 U. S. 568, 46 S. Ct. 425 (1926).
Rottschaeffer, Constitutional Law (1939), pp. 553, 554, 375-7.

V

The Committee's refusal to certify petitioner for admission to the Bar because of his religious beliefs and training making him a conscientious objector, constitutes an abuse of discretion, arbitrarily and unreasonably, to be reviewed by the Court.

In re Frank, 293 Ill. 263, 197 N. E. 640.
Ex parte McCabe, 293 Pac. 11.
Lowell v. Griffin, 303 U. S. 444.
Illinois Constitution (1870), Article 11, Sec. 3.
Ex parte Garland, 71 U. S. 333 (1866).
Schneiderman v. U. S. (June 21, 1943).
Scully v. Hallahan, 356 Ill. 185, p. 191.

[fol. 33]

VI

The Committee's refusal to certify petitioner is in effect a penalty imposed upon him because of his religious beliefs. The Committee's action is in clear violation of the Constitution.

Ex parte Garland, 71 U. S. 333 (1866).
Lowell v. Griffin, 303 U. S. 444.
Constitution of the United States.
Constitution of the State of Illinois.
Schneiderman vs. U. S. (June 21, 1943).

Cantwell vs. Conn., 310 U. S. 296, 303.
West Virginia State Board of Education v. Barnett (June 14, 1943).

[fol. 34] ARGUMENT

I. The power to prescribe the qualifications which entitle an applicant to be admitted to the bar is a judicial one.

Petitioner is greatly handicapped in presenting his argument against the decision of the Committee on Character and Fitness in refusing to certify him and admitting him to the practice of law in Illinois, because of the absence of findings in support of the Committee's decision. To overcome such lack of findings, petitioner attached hereto the full transcript of Record, and in addition thereto abstracted within this Petition all the salient points which were brought out by the Committee members during the examination of petitioner. The Transcript of Record and the abstract thereof shows without any doubt that the Committee members were interested, and interested only in petitioner's religious beliefs and training and in his position expressed by he himself, designating such position as conscientious objector to war. While it is true that the Committee members were asking in passing a few questions as to petitioner's personal habits, as to his drinking, smoking and dating girls, nevertheless it is maintained and maintained correctly that such questions were of no importance. They were of no importance in arriving at the Committee's decision firstly because such questions as to the personal habits of petitioner were never emphasized or followed up. Secondly because it is submitted that personal habits as smoking, drinking and dating girls did not in the past, and it is not hoped that it will in the future exclude any person from the practice of law, since there are a large number of outstanding members of this and other Bars endulging, we hope moderately and within reason, in drinking and smoking and dating.

Petitioner freely admitted that he claimed and the Draft Board granted him the classification as a conscientious objector to war. Under the Federal law the Draft Board recognized that petitioner must be exempt from participa-
[fol. 35] tion in the war and assign him to "work of national importance" (Record p. 4). Petitioner was ready and will-

ing. However, because of his physical condition he was unable to take up any work, and at the present he is unassigned as physically unfit. However, he may be called any time at the pleasure of the draft board (Rec. 5).

The power which is exercised by the Court and in consequence, of the delegation, part of it to the Committee, to set up qualifying restrictions in connection with a person's admission to the practice of law, is a judicial one, which must be exercised accordingly. We submit that the Committee failed to exercise its power as a judicial power ought to be, in that it failed to make any findings of facts which would support its refusal to admit petitioner to the practice of law, and further it failed to act judicially in that it set up certain rules heretofore non-existing and made qualifying restrictions on the basis of bias, prejudice, which exists in the public minds against conscientious objectors to war.

The United States Supreme Court in discussing the power which a Court exercises in admitting attorneys to practice stated:

> "Their admission or their exclusion is not the exercise of a mere ministerial power. It is the exercise of judicial power and has been so held in numerous cases. It was so held by the Court of Appeals of New York in the matter of the application of Cooper for admission. * * * attorneys and counsellors, said that Court, * * * are not only officers of the Court but officers whose duties relate almost exclusively to proceedings of a judicial nature. And hence their appointment may, with propriety, be entrusted to the Courts, and the latter in performance of this duty may very justly be considered as engaged in the exercise of their appropriate judicial functions."

The Court goes on to say that:

> "The attorney and counsellor, being by the solemn judicial act of the Court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors and to argue causes is something more than a mere indulgence revocable at the pleasure of the Court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the Court,

[fol. 36] for moral or professional delinquency." *Ex parte Garland 4 Wall (U. S.) 333, 379.*

Chief Justice Taney speaking for the United States Supreme Court stated:

> "And it has been well settled by the rules and practice of common law courts that it rests exclusively with the Courts to determine who is qualified to become one of its officers, as an attorney, and counsellor, and for what cause he ought to be removed. The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the Court or from passion, prejudice or personal hostility, but it is the duty of the Court to exercise and regulate it by a sound and just, judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the Court as the right and dignity of the court itself." *Ex parte Secombe 19 How (U. S.) 9, 13.*

The Courts of the various states follow the rules so laid down by the Supreme Court of the United States.

In *People* v. *McCabe, 18, Colo. 186, 32, p. 280,* the Court said:

> "A Court entrusted with the power to admit and disbar attorneys should be considerate and careful in exercising its jurisdiction. The interests of the (attorney) must in every case be weighed in the balance against the rights of the public; and the Court should endeavor to guard and protect both with fairness and impartiality."

Concerning the privilege or right to practice law, the Court quotes with approval *Thornton on Attorneys at Law, Section 62:*

> "The power to deny an application for admission because the evidence of good moral character is unsatisfactory is one of great delicacy and should be exercised with extreme caution and with a scrupulous regard for the character and rights of the applicant. On the other hand the standing of the profession must not be disregarded, nor must the Court shrink from the performance of a clear duty, however embarassing."

That the Illinois cases follow the rules hereinabove established by the United States Supreme Court and the other appeal courts of the United States can be seen by the decision in *Re Day 181, Ill. 73 page 90* and from *The People ex rel Chicago Bar Association* v. *Amos; 246 Ill. 299, 301 (1910)* wherein the Supreme Court of Illinois stated:

> [fol. 37] "It rests with the Court to determine who are qualified to become its officers as attorneys and for what cause they should be removed (in re Day 181 Ill. 73). This power, however, is not arbitrary or despotic to be exercised according to the pleasure of the Court, but is judicial (in re Day supra; ex rel Secombe 19, How. 9). It should be exercised with sound and just discretion according to the same rules of law which govern in the determination of other civil rights which are brought before the Court for disposal."

The Committee on Character and Fitness acts under the powers delegated to it by the Court. As the cases hereinabove cited made abundantly clear, the prescription of qualifications to the practice of law is a judicial one, the Courts themselves must apply them accordingly. The Courts cannot disregard the rules laid down, and in consequence its delegated agent, the Committee, exceeds its delegated authority if it fails to observe the rules as to the application and use of judicial power. As a Court, so must the Committee make findings of facts at the close of a hearing. The Committee was duty bound by the rules of the Court to show by its findings of fact the situation, pertinent and material facts, upon which it relied in making its decision. The Committee's failure to make findings of facts in itself is an error, because but for the reasonable conclusion to be reached from the Record, the Court would be prevented to review the Committee's decision judicially. The Committee's failure to make and present its findings of facts is prejudicial to petitioner because it handicaps him greatly in making a full presentation of his case in review. It makes it hard, if not impossible, for petitioner to argue whether or not the Committee's decision is based on substantial evidence, whether or not its decision is in compliance with the law. The Committee's failure in making findings of fact is contrary to the established practice of the Court in judicial procedure. The error of the Committee as a ground is respectfully submitted for recall to

set aside the decision of the Committee and issue its Order that petitioner be certified to the Board of Law Examiners and to be admitted to the practice of law in the State of Illinois.

[fol. 38] II. The statute of the State of Illinois enumerates the qualifications required for a person to be admitted to the bar. The Committee acting under the law must exercise its powers with sound discretion, that in failing to do so the court will review the action of the Committee.

The Illinois Revised Statutes provides that:

> "Persons may be admitted to practice as attorneys and counsellors-at-law in this State if they are citizens of the United States, at least twenty-one years of age, of good moral character and have satisfactorily passed an examination before the Board of Law Examiners."

The Statute also lays down a statement of educational requirements which an applicant seeking admission to the Bar must comply with. Petitioner has fully complied with these educational requirements and has successfully passed the examination given by the Board of Law Examiners of the State of Illinois, as he was informed by said Board.

The Statute further provides that:

> "Before admission to the Bar, each applicant shall be passed upon by the Committee (on Character and Fitness) in his district as to his character and moral fitness." * * * and further "If the Committee is of the opinion that the applicant is of approved character and moral fitness it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to be admitted to the Bar." *Illinois Revised Statute (1941), Paragraph 259.58, Chapter 110.*

The petitioner has met all the requirements of the above rules except the requirement concerning the approval of the Committee on moral character and fitness, which refused to certify the petitioner to the Board of Law Examiners. It is submitted that the Committee in so acting acted contrary to law, contrary to equity, and contrary to the decisions of the Court.

Petitioner is a citizen of the United States, is more than twenty-one years of age, has, as the affidavits submitted to

the Board of Law Examiners show, good moral character. Additional affidavits hereto attached (Exhibits D to I, both inclusive) prove it beyond a peradventure of doubt that petitioner is a person who well can take his place among the average citizen or average member of the Bar. He truly believes in the commands of God, and attempts and [fol. 39] does to the best of his ability conduct an exemplary life in accordance with the tenents of the Christian religion. Petitioner satisfactorily passed an examination before the Illinois Board of Law Examiners and before that he followed a course of education which complies in every respect with the statutory requirements as to the standard of educational requirements. Petitioner submitted, in accordance with the law, to an examination by the Committee, and that was where his path was barred, because apparently the Committee is of the *opinion* that he is not of approved character and moral fitness. There was not an iota of evidence, nor was there even an attempt to charge that petitioner is not of good moral character, and that he is morally unfit to practice law. At least not in the usual sense of the word. If the Committee has any basis for its opinion in excluding petitioner from the practice of law, that opinion, as the record discloses, must and can be based only on one thing, and that is that petitioner claims and he was granted exemption from military service because he is a conscientious objector to war, which position he takes because of his religious training and belief. As the review of the decision of this and other states clearly show, the Committee was in error, because one's religious beliefs and one's convictions based on such religious belief is and cannot be a qualifying or disqualifying requirement to the practice of law. The qualifications required by persons who desire to be admitted to the Bar are laid down by the Statute. The Statute must be followed. If the Committee fails to comply and refuses to follow the Statute, its decision is subject to judicial review and subject to be set aside by the Court of such review. See *In re Frank 293 Ill. 263, 127 N. E. 640. In re Crum 103 Ore. 296, 204 P. 948; In re Stepsay 98 P.(2d) 489.*

III. The Committee on Character and Fitness Has Certain Powers Delegated to it. Such Powers, Even Though They Are Discretionary, Are Not Absolute, and They Can-

not Be Exercised Arbitrarily, But Must Be Applied in Fairness Without Bias or Prejudice.

The Committee on Character and Fitness in exercising its [fol. 40] delegated power to determine the character and fitness of a person to practice law, exercises its power fairly without bias and prejudice. So it was said by the Court, that:

> "The right to practice law is a privilege. The law conferring such privileges must be general in its operation. No doubt the legislature, in passing an enactment for that purpose, may classify persons so long as the law establishing classes is general and has some reasonable relation to the end sought. There must be some difference which furnishes a reasonable basis for different legislation as to the different classes, and not a purely arbibtrary one, having no just relation to the subject of the legislation." *Re Day 181 Ill. 73.*

The Courts repeatedly considered the rules to be followed in administrating proceedings and it was held that while the same strictness required from a Court of record is not required of an administrative procedure, nevertheless it must be such as to accord substantial justice and fairness. *Mill v. Hay 10 F.(2d) 145.* Among the requirements of a fair trial, the Court stipulated the opportunity be given to the party to be heard, a reasonable determination of the case supported by findings of fact. We submit that while an opportunity was given to the petitioner to be heard before the Committee, there was no reasonable determination of the case, because as the petitioner queried before the Committee, "What has one's religious position to do with the practice of law." (Rec. p. 12) It is not reasonable to inquire into one's religious beliefs, because one's religious beliefs are not grounds for striking his name from the roll. Therefore, it cannot be a ground for excluding him from the practice of law. So it was said in *Re Attorneys License (1848) 21 N. J. L. 345* regarding the scope of an investigation into the private character of an applicant for admission to the Bar, that the investigation would be limited to such acts as would, after his admission to the Bar, be a ground for striking his name from the roll.

We understand that the Committee is charged with inquiring into the applicant's character and fitness to practice law. Character and moral fitness refer to personal and professional integrity, honesty, trustworthiness, veracity and respect to clients.

[fol. 41] We respectfully submit that the Committee in attempting to determine petitioner's character and moral fitness to practice law disregarded the purpose of its inquiry, because it cannot be maintained with any seriousness that the Bar would exclude those whose conduct is based on the strict interpretation of the Scriptures, as is the position of petitioner. Character and fitness with reference to the practice of law implies many things, including honesty and frankness towards clients. (*People v. Pace*) At no time were we able, however, to discover that either the legislators or the Courts intended ever to exclude from among the rank of lawyers those who while otherwise qualified insist upon fundamental compliance with the tenets of Christian religion, as petitioner insists. The words "good moral character" are general in their application, but of course they include all the elements essential to make up such a character. Among them are common honesty and veracity, especially in all professional intercourse. One wonders whether the Committee in refusing to certify petitioner for admission to the bar implied that fundamental belief and adherence to the teachings of Christ excludes the possibility of qualifying under the words of good moral character and fitness. We wonder whether the Committee intended and does imply that a strict adherence to the Scriptures excludes the possibility of honesty or the possibility of frankness towards one's clients, or excludes the possibility of being truthful in one's professional intercourse. We do not believe that that was the implication intended by the Committee. We rather believe that in refusing to certify this petitioner the Committee was acting under the pressure of times. That the Committee felt that in times of national emergency certain duties are cut out for each individual. We would have no quarrel with this position but for the reason that neither the Illinois law nor the Federal Statute provides that one cannot even in times of national emergency remain what one in his heart believes to be his duty imposed upon him by God.

[fol. 42] We scrutinized not only the law books but also the dictionaries and the encyclopedias to determine whether

or not the Committee under its delegated power was correct in excluding petitioner from the practice of law. We attempted to find whether or not the word "moral" and "fitness" imply that one may not be a pacifist in peace time as well as in war time, if such pacifism is based on one's religious convictions. Our studies show that "fitness" means ability to discharge with average efficiency the duties in question. It presupposes that the applicant is fit to receive the confidence attending the relation of lawyer and client. We submit that the record shows that petitioner is fit to receive the confidence attending the relation of lawyer and client. We submit that the affidavits of Dean Harno, Exhibit D; Dean Fornoff, Exhibit E; Harold R. Clark, Exhibit F; Reverend Paul Burt, Exhibit G; Max T. Foster, Exhibit H, and Dean A. Shinneman, Exhibit I clearly discloses that applicant is able to discharge his duties as a lawyer with an efficiency which can be expected to be above the average. The affidavit of persons who have known applicant discloses that he is fit to receive the confidence of a client. As to the word "moral" Webster has the following characterization to give: Moral is characterized by excellence in what pertains to practice or conduct, springing from or pertaining to man's natural sense or reason of what is right and wrong. One may quarrel with petitioner for his stand, though we submit that question of conscience is not subject of dispute. It is said that "gustibus non esdisputanteum" if that is not subject of dispute how can *be* maintain that one's conscience, one's religious convictions can be a subject of discussion. The Anglo-Saxon jurisprudence of the American State and Federal Constitution all stand for the right of free conscience. Both the laws and customs of this country are unanimous in demanding that one's conscience should not be, however unpopular, the conduct may be, if it is based on such conscience, the reason of exclusion from any of the civil rights. If such exclusion is not countenanced by our [fol. 43] laws and our customs, how can they maintain that one's conscience will preclude one from practicing one's chosen profession. The issue here is rather narrow. The Committee did not for a moment believe or could believe that petitioner is not qualified to pass his examination in law. It did not imply nor could it that petitioner is not of good moral character in the usual sense of the word. But the Committee, however, went beyond the customary

and inquired into petitioner's religious beliefs and into his conduct based on such belief. It so happened that at the present time it is thought that pacifism is something which may be practice- in peace time, it may have great value before and after war, but something that ought not to be indulged in during war time. Even if this reasoning would be correct, and we do not believe that it is, the Committee has no right either under the decisions of the Court or under the Constitution of this State or the Federal Government to refuse the certification of petitioner to the Board of Law Examiners just because he believes and says, even in war time, that war is bad and that the pacifism of Christ and his disciples is good. There is no gainsaying that the overwhelming majority of the people believe as petitioner does. The difference between him and the majority begins when he insists that this position is valid even in war time, while the majority of us, be rationalizing, maintain, but not necessarily believe, that pacifism must be discarded in time of war. In the case of *People v. Czarnecki, 268. Ill. 278. 109, N. E. 14* the Court scrutinized the purpose of the regulations which are laid down for the admission of attorneys to practice law. The Court concluded that the power of regulations is to assure to the Court the assistance of advocates of ability, of learning and of sound character. All that for the further purpose that the public may be protected from incompetent and dishonest practioners. (See also *7 Corpus Juris Secundum, p. 710*) Taking the above yard stick one wonders whether the Committee in refusing to certify petitioner meant to say that his objections to war based on his religious train- [fol. 44] ing and belief deprives him of ability of learning, of sound character. We cannot assume that that was the case. We cannot assume that the Committee in preventing petitioner to be admitted to the Bar meant to say that he, being a religious objector to violence, becomes incompetent to practice law, or becomes dishonest, since all other qualifications required of a lawyer were fully met by petitioner. Not only did petitioner submit proof as usually submitted by applicants to the bar, but he submitted additional affidavits of great length and exhaustive content which show, if they show anything, that petitioner is rather a person of extreme sense of morals. These affidavits of Dean Harno, Exhibit D; Dean Fornoff, Exhibit E; Harold R. Clark, Exhibit F; Reverend Paul Burt, Exhibit G, Max T. Foster,

Exhibit H and Dean A. Shinneman, Exhibit I are entitled to a most respectful consideration by the Committee, and we submit that on review by this Court "character" and "moral" and "fitness" are words of abstract meaning. The abstractness is brought to earth only when the words can be measured by factual yard stick as by the measure of conduct. As to petitioner's conduct, the affidavits are of sufficient evidence and in consequence they must be considered by the Committee and by the Court. *Worbasse v. State Bar*, 219 Cal. 566, 571, 28 P. (2d) 19 and *In re Stepsay* 98 P. (2d) 489.

IV. The Congress of the United States by Adopting the Selective Service Act and Giving Consideration To Those Who Because of "Religious Training and Belief" Are Unable To Bear Arms, Took the Stigma From the Conscientious Objectors to War. An Objection to War is Neither a Legal Offense Nor is it an Immoral Position Which Would Disqualify a Person the Practice of Law.

As we have previously shown, the Committee's refusal to certify petitioner and thus excluding him from the practice of law is based on nothing but the Committee's opinion that a conscientious objector to war, as petitioner is, cannot be considered a person of good moral character and cannot be considered fit to practice law. By this action the Committee put itself in violent disagreement with the Congress of the United States, which body by enacting the Selective [fol. 45] Service Act of 1917 and 1940 recognized the legality of the stand of conscientious objectors. It is interesting to note that the Act of 1917 pertaining to conscientious objectors was a rather restricted one, in that only those who were members of the three historical peace churches were able to claim exemption from the draft on the ground of conscientious objection to war. The Act of 1940 liberalized the law in that it instructed the draft boards to exempt from war service all those who claim conscientious objection to war on the basis of religious training and belief (*50 U. S. C. A. 204 (1917); 50 U. S. C. A. 305 (1941)* Congress in giving recognition to conscientious objectors looked upon the history of this country and those who were responsible for the building of the government of this Union. Congress concluded by giving recognition to conscientious objectors that applicant's position that he cannot do military service or use methods of violence without violating his

Christian convictions is not startling or unusual but has ample historical precedent.

During the first three centuries of the Christian era, almost all christians refused to do military service because they took literally the words of the Sermon the *the* Mount and other of Jesus's teaching that forbade resistance with violence. It was not until the Conversion of Constantine and the making of Christianity a state religion that this position was abandoned. However, in all times since then, individuals and minority sects have reembraced the original pacifist position. Among the various groups have been the Third Order of St. Francis of Assisi, the Waldensians, Lollards, Anabaptists, Doukobors, Moravians, Bretheran, Mennonites and Friends.

By far the best known of the Christian pacifist sects is the Society of Friends (Quakers). Many of the members of this group have consistently refused to do any form of military service even medical service. They have refused to engage in the manufacture of arms or any related occupations, to carry weapons, or to use violence in defending [fol. 46] themselves, their families and their freinds.

The Quakers in Early American Colonies travelled and lived among the Indians without weapons of any kind; they did not try to defend themselves from Indian raids; they refused to serve in the colonial militia; and they refused to be conscripted for the various Indian wars or for the Revolutionary War. Likewise during the Civil War, the World War and the present war, many of them have objected to conscription, even going to jail rather than do non-combatant service in the armed forces. Though some Quakers have not held to this traditional position, large numbers have retained their original pacifist faith.

The Methodist Church of which the petitioner is a member, has ruled in General Conference that the pacifist position is a valid Christian position and have stated that they will support those of their members who hold such beliefs. Many other churches have taken similar action. At the present time there are over 6,000 men of draft age belonging to 125 different religious sects who have been recognized as conscientious objectors to all forms of military service and are now doing work of national importance in Civilian Public Service Camps.

The presence of large numbers of pacifist in this country and England forced an early recognition of their position

by the governments of both countries. During the Revolutionary War some states provided for exemption from military service by statute or in their constitutions. Since that time 27 states have incorporated provisions in their constitutions giving varying degrees of exemption from military service. At least one state gives complete exemption to all who are conscientious objectors for religious reasons.

At the time of the framing of the first ten amendments to the Federal Constitution, Congress was aware of the problem of dealing with pacifist sects and recognized their rights. Madison and others were desirous of inserting a specific [fol. 47] provision giving complete exemption from all military service. However, since the militia was primarily under state control, it was finally decided to depend on state protection. In all of the discussions there was a clear recognition of the pacifist position and a manifest desire to protect those who held it.

The Selective Service Acts of the Civil War and the World War both provided exemption from combatant service to members of recognized pacifist sects. The present Selective Service Act provides that all those who are conscientiously opposed for religious reasons to any form of military service shall not be inducted into the armed forces, but shall be assigned to do work of national importance under civilian control. Over 6,000 men have been sent to the Civilian Public Service Camps established in pursuance of this policy of giving the privilege of alternative service.

The English government has likewise recognized the pacifist position. In the World War and in the present war it has completely exempted conscientious objectors from all compulsory service.

It is clear that the governments of the various states, the federal government and the English Government have all given express recognition to pacifist beliefs, has sanctioned those beliefs, and has given protection under the law to those who hold such beliefs. The trend has been to give them constantly increased recognition and protection. The decision of the Committee is directly contrary to the historical attitude in the country and the spirit of the exemption provisions of the recent Selective Service Act. It is impossible to follow the Committee in its decision to exclude petitioner from practice of law because of his strict

pacifist religious beliefs and conduct. It is difficult to understand it if one considers the great many Christian pacifists who were holding positions of extreme importance in the life of this nation.

[fol. 48] Since our earliest history pacifist have held high positions in government, ably aiding in administering the law. Pennsylvania was founded by William Penn, a pacifist Quaker, and for 70 years was governed by a Quaker assembly. During that period they refused to establish a militia because of their religious beliefs. Governor Thomas Penn tried to exclude all Quakers from the assembly because he said these religious beliefs made them unfit to hold office, but he was defeated in his attempt. Although they refused to use military force or to use violence in self-defense, the Quakers believed in the use of a police power and maintained law and order. Then, as now, others thought that such distinction was illogical.

Rhode Island elected a Quaker governor in 1672 and for many years the control of the colony was in Quaker hands. Here too, the Quakers refused to employ military force against the Indians, but maintained internal peace.

Many pacifists, Quakers and otherwise, have been entrusted with high public office in England and in America, among the prominent ones others than those previously mentioned are:

John Archdale, Governor of Caroline, 1690.

David Lloyd, Leader of Pennsylvania Assembly and later Chief Justice of the Pennsylvania Colonial Court.

John Bright, Member of Parliament for over 25 years and a member of the Cabinet under Gladstone.

John Greenleaf Whittier, Member of Massachusetts legislature in 1834, candidate for Congress in 1842, member of the Electoral College in 1864, 1868, 1872, 1876 and 1884.

Duke of Bedford Present member of the House of Lords.

It may be countered that while a pacifist Christian can be in colonial times clothed with the position of the Governor of Pennsylvania or of Rhode Island, that he may be the Governor of Carolina or the Leader of the Pennsylvania Assembly, that one adhering to strict Christian pacifist belief and conducting one's self accordingly may be the Chief Justice of the Pennsylvania Colonial Court, one may be [fol. 49] even a member of the English Cabinet or member of the Legislature of Massachusetts, he may be a member

of the Electoral College, but he may not be a member of the Illinois Bar. Such a conclusion is, however, erroneous because of the many precedents, according to which pacifist- in the strictest sense of the word, while adhering to their convictions were members of the Bar.

Many pacifist- have been admitted to the bar in the last 150 years. There are at present a number of pacifist- practicing law. About 20 lawyers who have registered as conscientious objectors and been drafted have been assigned to Civilian Public Service Camps.

In spite of the long history of pacifist- holding high public offices and practicing law, there is no record of their ever being disqualified because of their religious belief. There is no reported case of any pacifist even being questioned as to his fitness to practice law. The Society of Friends knows of no instance in which the point has been raised, nor has the applicant, after extensive inquiry, been able to find anyone who has hea-d of a similar case. There have been instances where pacifist- have been admitted to practice by a Court which apparently had knowledge of their religious training and beliefs, but their fitness was never questioned.

In looking over the cases we were unable to find any which would have held that a pacifist- is not fit to practice law. There is one case in which a person, not a pacifist, refused to comply with the draft law for which act his name was removed from the roll of attorneys. On appeal, the Court reversed the decision and restored his name to the roll. We could not even attempt to draw a parallel between petitioner's pacifist refusal to bear arms and that of Sullivan who refused in compliance with the draft law during the war of 1917-18, because of his sympathies to Germany. But even then the Court in reversing the decision of the Committee taking Sullivan's name from the roll said:

> [fol. 50] "However, we are not prepared to say that the applicant is so far deficient in moral character that he cannot become a useful member of society and an honorable and useful member of the bar of this state." The Court held that "he may be reinstated upon a satisfactory showing that he is a man of good character and worthy of the respect and confidence of his fellowmen." *In re Sullivan 57 Mont. 592, 189 Pac. 770, (1920)*

V. The Committee's Refusal To Certify Petitioner for Admission to the Bar Because of His Religious Beliefs and Training Making Him a Conscientious Objector, Constitutes An Abuse of Discretion, Arbitrarily and Unreasonably, to be Reviewed by the Court.

The Constitution of the state and of the United States both emphasize that the religious belief is neither a qualification nor disqualification for holding of office or to practice a profession. No religious tests and no religious qualifications should be permitted as a requirement for the admission to the Bar. We respectfully submit that the refusal to certify the petitioner for admission solely on religious grounds constitute an abuse of discretion, on the part of the Committee, and their determination which was effected through such an abuse of discretion is arbitrary and unreasonable. Since the Committee acted arbitrarily, since its refusal to certify petitioner is unreasonable and represents an abuse of its discretion, we believe that such action is subject for judicial review for the Court. Petitioner was barred from practicing his profession, for which he qualified through many years of study. A person has a right to engage in any lawful employment for a livelihood. A person has a privilege to be admitted to the bar after having met the qualification prescribed by the rules promulgated by the Supreme Court of Illinois. To deprive a person of such a privilege solely on the basis of his religious beliefs, is, we submit, a denial of due process of law in violation of the Fourteenth Amendment.

In Baker v. Daly, 45 F.(2d) 881, 882 the Court, in discussing the Fourteenth Amendment to the Constitution of the United States, which declares that no state shall deprive [fol. 51] any person of life, liberty or property without due process of law, made the following meaningful statement:

> "This Constitutional provision has been declared by the Supreme Court to mean not only the right of the citizen to be free from mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation." (citing cases)

The right thus granted is, of course, subject to the police power of the state to enact laws essential to the public safety, health or morals; to justify a state in exercising such authority, it must appear that the interest of the public requires such interposition and that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive to individuals.

> "The Legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business or impose undue and unnecessary restrictions upon lawful occupations."

The Courts of Illinois follow substantially the Federal decision in *Baker* v. *Daly, supra.* The Supreme Court of Illinois stated:

> "It is one of the fundamentals of our democratic form of government that every citizen has the inalienable right to follow any legitimate trade, occupation or business which he sees fit. His labor is his property entitled to the full and equal protection of the Federal Constitution. It is also embraced within the constitutional provision guaranteeing to everyone liberty and the pursuit of happiness. (Algeyer v. Louisiana 165 U. S. 578) This right to pursue any trade or calling is subordinate to the right of the state to limit such freedom of action by statutory regulations where the public health, safety, or welfare of society may require. (Nebbia v. New York 291 U. S. 502) However, in these instances where the police power is invoked to regulate and supervise a legitimate occupation the restraint imposed must be reasonable. The determination by the General Assembly that such regulation upon trade are needful is not conclusive and is always subject to review. In order for such regulations to be lawfully imposed upon the constitutional rights of the citizen to pursue his trade or business, the act passed under the guise of a measure to protect the public health, comfort or welfare must have a definite relation to the ends sought to be attained."
> (Banghart v. Walsh 339 Ill. 132) *Scully* v. *Hallihan* 365 Ill. 185, 191 (1937)

[fol. 52] The right to practice law is a privilege or franchise. *7 Corp. Juris Sec. p. 708.* The refusal of such a

privilege should not be done in a manner not consistent with the due process of law. So it was said by this Court.

> "The right to practice dentistry is a valuable right. It is a property right within the due process clause of the Constitution. (citing a case) Revocation of the license of a professional man to practice his chosen profession carries with it not only disgrace and humiliation but deprives him of his means of earning his livelihood. It is the death of his professional life, and there is usually no resurrection after such a death. In a proceeding of this nature, due process of the law requires a definite charge, adequate notice and a full, fair and impartial hearing." *Kalman v. Walsh 355 Ill. 341, 346.*

We respectfully submit that the refusal of the Committee to certify petitioner for admission solely on the basis of his religious beliefs was arbitrary and unreasonable and it deprived the petitioner of due process of law.

Although a Court will ordinarily refuse to exercise its power to admit applicant to practice law in contravention to the adverse recommendation of a Committee of Bar Examiners, a Court will exercise such powers when "convincing showing is made by the applicant to the Court that such adverse recommendation is not based upon sound premises and valid reasoning." *Spears v. State Bar of California 294 Pac. 697, 72 ALR 923, 928.*

The Committee's action in this case does not measure up the standard set by this Court which said:

> "The Court will not ordinarily review the decision of the Committee on Character and Fitness against granting a certificate. If such a review may be had in any case it will be had where there has been an arbitrary refusal to hear and consider evidence which may be presented, or a willful refusal of a certificate manifestly not based upon an investigation and consideration of the applicant's qualification and. . . . The granting of the certificate is committed to the judgment and discretion of the Committee after a personal examination of each applicant and an investigation of his previous history and such evidence as may be produced. Unless a manifest abuse of this discretion is clearly shown, its judgment will be accepted

as final and no re-examination of its decision will be undertaken." *In re Frank 293 Ill. 263 (1920)*

[fol. 53] We know the Courts will not over-rule the judgment of a Committee for a mere difference of opinion as to the qualifications and general fitness, but we believe that the Court will set aside the decision of a Committee which as in the instant case is arbitrarily biased and contrary to the law of this State and of the Constitution of the United States.

An attorney has a duty to aid the Court in seeking to help it by seeing that actions and proceedings are conducted in a proper and dignified manner, free from passion and personal animosities and decided on the merit only. He has a duty to aid any effort under the Court to root out corruption and fraud and to devote his ability, skill and diligence along ethical and professional lines to the interest of his client. The petitioner feels that, and has shown, he is qualified and that he will discharge above duties of an attorney with honesty and faithfulness. We again refer to the absence of any findings of fact of the Committee and to the difficulties which we encountered because of that, and we also refer to the necessity of making certain assumptions and look for implications raised by the questions of the Committee members.

There appears to be an implication that the Committee felt that the applicant could not take the required oath of office because he refused to bear arms. There has been no question as to his sincerity or his willingness to take the oath, and there is no doubt as to his attachment to the principles of the Constitution and his belief in the democratic form of government. The question is whether his conscientious objection constitutes a mental reservation that makes it impossible for him to take the oath to support the Constitution.

Two cases which involved the taking of oaths by persons who were not willing to give an unqualified pledge to bear arms have been considered by the Supreme Court of the United States. These cases are not authority in this case for the following reasons:

1. Both of those cases involved the admission of aliens to citizenship and were based upon the absolute power of

[fol. 54] Congress over aliens and its power to grant citizenship on such conditions as it wishes to impose.

2. Congress as a condition of admission had required an oath that the prospective citizen would "support and defend the Constitution against all enemies, foreign and domestic." This had been expanded by the administering agency to include a promise to bear arms. The oath required of the applicant is simply to "support the Constitution."

The Department of State, in granting visas for foreign travel, requires an oath of allegiance but hasn't specified that the applicant must be willing to bear arms. A large number of pacifists have taken that oath, some of them recently in leaving to do relief work in other countries. Never has their capacity to take that oath been questioned.

3. The decision in these two cases were based upon the individual's refusal to bear arms even though Congress had not granted exemption. The applican't refusal has been based upon a specific exemption of Congress under which he has qualified and been recognized.

4. Both of these decisions were by a divided court (6-3 and 5-4) with vigorous dissents in each case. These dissenting opinions more accurately reflect the present attitude of the court in protecting religious freedom.

Chief Justice Hughes in his dissent in the *Macintosh* case stated that a similar oath has been required of holders of federal offices but that it had never been considered that conscientious objectors were unable to take the oath of office. On the contrary, the historical policy of Congress in Exempting conscientious objectors showed that it never considered a willingness to bear arms was essential to the taking of the oath.

Justice Holmes dissenting in the *Schwimmer* case involving the exclusion of a pacifist woman said:

> "Some of her answers might excite popular prejudice, but if there is any principle in the Constitution that imperatively calls for an attachment than any other, [fol. 55] it is the principle of free thought—not free thought for those we agree with but freedom for the thought we hate.
>
> * * * I would suggest that the Quakers have done their share to make this country what it is, that many

citizens agree with the applicant's beliefs, and that we never regretted our inability to expel them because they believed more than some of us in the Sermon on the Mount."

VI. The Committee's Refusal to Certify Petitioner Is in Effect a Penalty Imposed upon Him Because of His Religious Beliefs. The Committee's Action Is in Clear Violation of the Constitution.

Now the Record discloses not even a shadow which could be cast upon petitioner's moral character and fitness. There is no doubt that on the contrary, there is convincing evidence of his high moral integrity and honesty. There is no doubt that petitioner is well aware of the responsibilities of a lawyer. There is proof of his rather unusual learning, as it is testified to by his being chosen as a teacher of law. The Committee erred and erred grievously to the prejudice of petitioner when it refused to certify him to the Board of Law Examiners. The Committee erred because as it was said in *Ex parte Garland, supra* although the legislators may prescribe qualifications for office of attorney, they cannot exercise that power "as a means for infliction of punishment against the provisions of the Constitution." The Committee's refusal in certifying petitioner is arbitrary and unreasonable, because it is based on neither law or customs. Petitioner maintains that participation in and use of destructive violence as in a war is contrary and incompatible with his religious obligation. The Committee refusing certification inflicted a punishment against petitioner for no other reason but because of his religious beliefs. The Committee just about told to petitioner, "Well if you are willing to give up your religious beliefs we shall admit you to the practice of law," thus placing petitioner under a restriction as to religious freedom. Such compulsion is not countenanced by our Courts, because

> [fol. 56] "Official compulsion to affirm what is contrary to one's religious belief is the antithesis of freedom of worship, which, it is well to recall, was achieved in this country only after what Jefferson characterized as the 'severest contest which I have ever been engaged'."

The Supreme Court of the United States in a series of cases pertaining to freedom of conscience, freedom of religion and freedom of speech in the so-called Jehovah Witnesses cases stated that freedom of religion among others is protected by the First Amendment from infringement by Congress, and that it is among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from infraction by state action. *(Lowell v. Griffin 330 U. S. 444 and other cases cited.)*

We do not intend to burden the Court by elaborate quotations from the Constitution, but we feel that it is necessary in passing upon the action of the Committee to recall that the First Amendment of the Constitution of the United States there is an injunction that:

> "Congress shall make no law respecting the establishment of religion or providing the free exercise thereof."

One wonders whether the words of this Amendment must become meaningless as they do if the Committee's action is upheld. One wonders whether petitioner's free exercise of his religion can be prohibited by compulsion and duress in that he is told that the Committee is upheld and that he may not practice law for which he prepared through many years of study, unless he desists from practicing his religion as his conscience dictates.

We wonder whether the Committee felt that it followed the Fourteenth Amendment to the Constitution of the United States when it refused to certify petitioner who otherwise qualified the practice of law. That Amendment states:

> "Nor shall any state deprive any person of life, liberty or property without due process of law."

It may appear trite if we repeat that the practice of one's profession is property right. And we maintain that the Committee by its refusal to certify petitioner took away [fol. 57] his property right, valuable or otherwise depending on his future practice, by refusing to certify him to the Board of Law Examiners, and in so doing the Committee disregarded the Constitution of the United States.

Petitioner's convictions which prohibit his bearing arms

are not a result of cowardice nor of lack of patriotism. They are a direct and ultimate result of his religious beliefs and of his interpretation of the New Testament. When the Committee refused to certify petitioner for admission to the Bar, it inflicted punishment on him because of his religious beliefs. Such action of the Committee is clearly unconstitutional because *Article 11, Section 3 of the Illinois Constitution (1870)* provides:

> "The free exercise and enjoyment of religious profession and worship without discrimination shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions. * * *"

Courts have had a jealous regard for the freedom of religion and its determination of such cases was guided by the spirit of freedom and tolerance in which our nation was founded. The Courts have acted under the presumption that under which the citizens of this nation live in a

> "free world in which men are privileged to think and act and speak according to their convictions without fear of punishment or further exile so long as they keep the peace and obey the law." *Schneiderman v. United States June 21, 1943.*

The Committee in refusing to act on behalf of petitioner violated the Fourteenth Amendment of the United States. In *Cantwell v. Connecticut 310 U. S. 296, 303* the Court after discussing the First Amendment stated:

> "The Fourteenth Amendment has rendered the legislatures of the state as incompetent as Congress to enact such laws. Constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organizations or form or worship as the individual may choose cannot be restricted by law. On the other hand it safeguards the free exercise of the chosen form of religion. * * *"

[fol. 58] In *West Virginia State Board of Education v. Barnette June 14, 1943* the Court stated:

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote; they depend on the outcome of no election."

The Court recognizes the power of a state to impose restrictions which a legislature may have a "national basis" for adopting under the due process test.

> "But freedom of speech and of press, of assembly and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the state, it is the more specific limiting principles of the first Amendment that finally governs the case."

The petitioner without any disrespect to the country or to its representatives, and without inducing anyone to believe likewise, and without denying the right to others the right to believe differently interprets the Bible as commanding that he should not participate in destructive violence or in war. His sincerity and his devotedness to this belief is evidenced by his willingness to suffer punishment and even risk his own life rather than act in contravention to his belief.

Freedom of conscience is not limited to conv-iences and freedom of religion is not restricted to ceremonies or to matters superficial in their nature.

> "But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." *West Virginia State Board of Education v. Barnette U. S. June 14, 1943.*

The so-called "misconduct" for which petitioner could be reproached for is his taking the New Testament too seriously. Instead of merely reading *the* preaching the Sermon [fol. 59] on the Mount, he tries to practice it. The only fault of the petitioner consist in his attempt to act as a good Christian in accordance with his interpretation of the Bible, and according to the dictates of his conscience. We respectfully submit that the profession of law does not shut its gates to persons who have qualified in all other respects, even when they follow in the footsteps of that Great Teacher of mankind who delivered the Sermon *of* the Mount. We respectfully submit that under our Constitutional guarantees even good Christians who have met all the requirements for the admission to the bar may be admitted to practice law.

Because of our firmly rooted tradition of freedom of belief, there should be no presumption on the part of a Court which will circumscribe liberty of thought and of religion. *Schneiderman v. United States, U. S., June 21, 1943.*

Conclusion

It was held by the Supreme Court of California in the case of *Ex parte McCabe, 293 Pac. 247* that where the Committee of Bar Examiners denied the application of admission to the Bar, after due investigation, a Motion to the Court to be admitted to practice is the proper procedure. It is for this reason that petitioner submits his Petition and Brief in support thereof to review the action of the Committee on Character and Fitness and to grant him a license to practice law.

Petitioner offers to submit to an examination the Court may direct and prays that he may be granted the license or that a rule be entered on the Committee to answer this Petition and grant the petitioner a certificate to the Board of Law Examiners as required by the rule of this Court.

Petitioner submits that while he, because of religious training and belief, is unable to support the violent means which were chosen by this country in maintaining and obtaining certain freedoms against the adversaries of this [fol. 60] country, he nevertheless believes wholly in obtaining and maintaining such freedoms. To paraphrase Justice Murphy of the United States Supreme Court, the action of the Committee bears "melancholy resemblance to the action" of the totalitarians whose rule this country is fight-

ing against. It is submitted that the resemblence is great, and the consideration of such resemblence is melancholy. It is not to be hoped for that while fighting for certain basic freedoms the Committee will be permitted to take away the primary basic freedom, that is that of religion. We submit that if the Committee is permitted to exclude this petitioner from the practice of law because of his religious beliefs, then our fight for freedom is doomed to failure from the beginning. We do not believe that this Court will permit the Committee to stamp the freedom of conscience and freedom of religion as incompatible with the practice of law.

Therefore, it is respectfully prayed that the Committee be ordered to grant this petitioner a certificate to the Board of Law Examiners in accordance with the rules of this Court.

Respectfully submitted, Francis Heisler, Attorney for Petitioner.

[fol. 61] EXHIBIT "C" TO PETITION

State Board of Law Examiners
State of Illinois
Horace B. Garman, Secretary
602 Millikin Building, Decatur, Illinois

March 22, 1943.

Mr. Clyde W. Summers, University of Toledo College of Law, Toledo, Ohio.

DEAR MR. SUMMERS:

The communications you have recently addressed to me with affidavits of various persons, including Dean Harno, have been received. This reply is personal and not an expression of the Committee on Character and Fitness.

I think the record establishes that you are a conscientious objector, also that your philosophical beliefs go further. You eschew the use of force regardless of circumstances but the law which you profess to embrace and which you teach and would practice is not an abstraction observed through mutual respect. It is real. It is the result of experience of man in an imperfect world, necessary we believe

to restrain the strong and protect the weak. It recognizes the right even of the individual to use force under certain circumstances and commands the use of force to obtain its observance.

Your conduct is governed by a higher law which we all hope may some day prevail. In the meantime most of us think chaos would prevail and civilization might be destroyed if the wolves are not kept at bay. Lawyers have the job of aiding in the administration and enforcement of the law,—all the law. What protection can the law be to the weak if lawyers do not consider its mandates to be entitled to obedience by force if necessary? Can a man conscientiously take an oath to support the Constitution and the laws, at the same time reserving the use of force from the meaning of "support"?

I do not argue against your religious beliefs or your philosophy of non-violence. My point is merely that your position seems inconsistent with the obligation of an attorney at law.

Yours truly, Horace B. Garman.

HBG:RC

[fol. 62] EXHIBIT "C-1" TO PETITION

University of Toledo, Toledo, Ohio

March 23, 1943.

Mr. Horace B. Garman, 612 Millikin Building, Decatur, Illinois

DEAR MR. GARMAN:

I received your letter this afternoon and feel that I should answer it—not to *dispute* your position but rather to more fully explain my own so that you might understand. I wish to refrain from arguing the validity of the position for it is such a personal thing that any argument is futile. We can not convince one another of the rightness of our own beliefs but only learn to respect one another for the sincerety of the others convictions.

I was aware of the reasoning on which you felt I was unfit to practice law and I felt the weight of its logical force. Your approach to the problem made me fully aware of my own appa*r*ent lo*g*ical inconsistency and compelled

me to reexamine and think through the whole relationship to the practice of law. That alone has been worth much of the agony that this whole affair has caused.

Believe me, if I felt deep inside myself that the law was essentially based upon the use of un-Christian force, that the practice of law would involve me in conduct contrary to my interpretation of the Sermon on The Mount, then I would never have applied for admission to the bar any more than I would enlist in the army. If in the practice of law I should find myself expected to act in a way inconsistent with my inner convictions, then I should immediately withdraw. It is simply because I do not feel or find the conflict that I shall continue to seek admission.

My beliefs as to the rightness of the use of force certainly can not be organized into an infallible logical pattern. To do so would be to rationalize mentally, while the truth is, that it is based on an inner compulsion beyond explanation. You can not prove, explain, nor organize your belief that there is a God; you can only believe. Yet would you deny that belief simply because it came from within the heart rather than from without the mind?

It is at this point that I am afraid you have totally misunderstood my problem. You want me to be logically consistent, but I can't be and be honest. You want to take the logical implications of my conscientious objection to the use of violence in particular instances and apply them to other situations. To me they are different though I can't really explain why in a logical and scientific sense. Armies are different from police forces, killing is different from restraining, and non-violence never implies non-resistance. I can give you logical answers on the distinctions but frankly, they are more rationalizations and the real reason is something within which can not be explained.

[fol. 63] March 23, 1943.

MR. GARMAN:

The fact that law permits self-defense does not mean that it requires it. Those who can not believe in non-violence must have some means of protection. They use the means they believe are right. I could not kill a man because I believe it wrong, yet I do not believe those to be murderers who do so because the government says they ought

and they believe that obedience is right. You felt this illogical and perhaps it is. I can not help it for I believe it regardless of logic.

I realize that a lawyer owes a special obligation to protect society from destructive forces. I am not sure that any lawyer really believes he owes a duty to enforce all legislative or judicial acts. As one lawyer said in this regard, "Even the most enthusiastic militarist would not kill their own family simply because the government ordered it." I am sure that if I were in Germany I would have no part in helping enforce the anti-Jewish laws. If it happened in this country I do not believe I should be bound to help in such un-Christian law enforcement. Every man with any moral integrity will draw the line at some point. The man who will not draw a line is not fit to practice law.

Throughout the legal structure there is an element of force lurking in the background. Yet that is not the strength of law. Men obey laws because they believe they ought and when law is enforced only by physical compulsion there is no longer law but incipient revolution. Fascism believes in law by superior force, democracy believes in law by consent. There are of course those who fail to see the moral obligation to obey the law. In these, the special cases, the law brings to bear its restraining and corrective influence. I see no objection to that element of the law, although I confess its apparent logical inconsistency with my other beliefs. This force exists almost entirely in the criminal law area which is a small portion of the law. I do not believe one is obligated to become a prosecuting attorney and I am sure he is not required ever to ask for the death penalty. In your practice of law, do you find many times when you are expected to personally use physical force on another individual?

Since the hearing I have been doing considerable reading to see if any other person found themselves in the same sort of dilemma. In addition I have written numerous letters to try and uncover any information that might be available. My position is not unique for Christians ever since the beginning have held these pacifist views. It has been minorities yet they have taken the "absolute" view of the use of violence.

The most notable example has been the Quakers who since 1650 have clung to pacifism, even refusing to strike

in self-defense or in defense of their families. They practiced this consistently through persecution, Indian raids, and wars. Some Quakers have not held to it but many have. Among those who took the absolute pacifist position are William Penn who established, organized, and governed a colony. His views were almost identical to those I try to follow yet he was able to maintain law and order.

[fol. 64] Others with like views are John Bright, member of Parliament and member of the British cabinet; John Greenleaf Whittier who was a member of the state legislature, a candidate for Congress, and for 20 years member of the electoral college; and many others.

I have found that there are a number of pacifist lawyers, especially in the state of Pennsylvania. They are known to be pacifists, were admitted to practice by committees of courts who knew of it, and are still practicing. At least one was a conscientious objector in the last war and was admitted to practice before the United States Supreme Court shortly after the war. In none of these cases was the question even raised as to their fitness and none of them have found any essential inconsistency between their religious beliefs and the practice of law.

I have found at least one case in Illinois where a person was admitted by a member of the Character and Fitness Committee who knew that the applicant was a pacifist. He has said that he felt at the time that the views of the applicant in that respect were no grounds for disqualification and that he still feels that way. I know the applicant personally and know that his beliefs in this respect are almost identical to my own.

It has struck me strange that with all of the pacifists that have practiced law in this country in the last 150 years, that there is not but one reported case where this problem has been raised. Nor have any of the Quakers any record of it being raised unofficially. No other peace or pacifist group has ever heard of such a case.

I mention all of these things merely to show that the the logic of my position and its distinctions may be far from clear, that I am not the first one to make that sort of distinction. Whatever the weakness of my logic, historical practice is clear. It is with the reenforcement of this knowledge that I continue in my convictions and still believe there is nothing inconsistent between the practice

of law and *the* my own interpretations of the mandate of the Sermon on The Mount.

I did not obtain the affidavits which you have been receiving because I thought you questioned my sincerety. Rather it was to make the record clear that the issue was solely my religious convictions, that they had never influenced me inconsistently with the practice of law, that those who knew me best in my actual conduct found no flaws in my actions in regard to the law and maintenance of order, and that they felt I was a fit person to practice law. I believe that the best test is what I have done and not what I might do in some unlikely hypothetical situation.

This has been extremely long and perhaps in spots has shown some impatience. I appreciate the viewpoint of the Committee and know your own position. I do not mean to argue but I have hoped that you might understand. We do not believe alike, and I say with all sincerety, neither of us can be sure we are right. Each must follow out his own convictions and I do hope that you will not think less of me for doing that.

Sincerely yours, Clyde W. Summers.

[fol. 65] EXHIBIT "D" TO PETITION

AFFIDAVIT

STATE OF ILLINOIS,
County of Champaign ss:

In the Matter of the Application of Clyde Wilson Summers for Admission to the Bar of Illinois

Albert J. Harno being first duly sworn deposes and says that he is Dean of the College of Law of the University of Illinois; that he knows Clyde Wilson Summers, applicant for admission to the Bar of Illinois; that he became acquainted with the applicant in September 1939 when the latter entered the College of Law of the University of Illinois as a regularly enrolled student in that College; that the applicant entered upon his law studies after having made an excellent record in the College of Commerce and Business Administration of the University, from which College he was graduated in 1939 with a Bachelor of Science degree,

with high honors in accountancy; that applicant made an equally high record in the College of Law of the University, from which College he was graduated in June 1942 with a degree of Doctor of Law (J. D.) with high honors. Affiant further alleges that he knew the applicant well and was in a position to observe his conduct during the period the applicant was enrolled in the College of Law; that applicant's conduct throughout was exemplary; that affiant was familiar with the fact that the applicant was deeply religious, that he adhered to the tenet that war is inconsistent with his religious beliefs, and that he is a conscientious objector. Affiant alleges further that he has never observed anything in the opinions and conduct of the applicant that leads the affiant to believe that the applicant's adherence to his religious convictions is inconsistent with the highest qualifications associated with a lawyer in the practice of law. Finally, affiant alleges that it is his belief that the applicant has an unusually high sense of ethical values and that he believes the applicant's conduct in the practice of law would be governed throughout by exemplary ethical principles.

———.

Subscribed and sworn to before me, a Notary Public, this — day of March, 1943. ——— ———, Notary Public.

———

[fol. 66] EXHIBIT "E" TO PETITION

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

In the matter of the Admission to the Bar of Clyde W. Summers

SUPPORTING AFFIDAVIT

Charles W. Fornoff, being first duly sworn, deposes and says:

That he is a member of the Bar of the State of Illinois, and formerly a resident of the City of Pana and State of Illinois; that he now is a resident of the City of Toledo, Lucas County, State of Ohio; that he is the Acting Dean of the College of Law of the University of Toledo, located in the City of Toledo and State of Ohio; that in September,

1918 he enlisted in the armed services of the United States and received an honorable discharge from the Army in December, 1918.

That he has known Clyde W. Summers since September 14, 1942, and has been intimately associated with him from that time to the present; that he is acquainted with the general character and reputation in this community of said Clyde W. Summers.

That Clyde W. Summers is a young man of excellent character and high intellectual attainments; that he is a man of deep and sincere religious belief, and active in the work of his church in this locality and in regular attendance on church services.

That Clyde W. Summers now holds the appointment of Instructor in Law in the College of Law of the University of Toledo, and has been reappointed to this position for the coming year; that at the time when Mr. Summers was tendered his first appointment to this position, he informed affiant of his status under the Selective Service Act of the United States, and that he was a conscientious objector to military service; that Mr. Summers was recommended for [fol. 67] such appointment by eminent scholars of the faculties of both the University of Illinois and the Columbia University Schools of law who were aware of the fact that Mr. Summers was a conscientious objector; that the administration of this University and College of Law considered the fact that he was a conscientious objector to be no ground of objection to his appointment.

That Mr. Summers has not undertaken to propagate his beliefs as conscientious objector in his role as Instructor in Law, and has conducted his work in the College of Law in a discrete and satisfactory manner.

That Mr. Summers has done an excellent and thoroughly satisfactory service in the teaching of Law; that he has recently had published a scholarly article in the Michigan Law Review dealing with the case law on procedure of the National Labor Relations Board; that he has a very pleasing and effective personality as a teacher of law; that he is careful and diligent in his work; that he displays an extensive and sound knowledge of law which in the opinion of the affiant demonstrates his fitness of mind for admission to the Bar of the Supreme Court of the State of Illinois.

That said Clyde W. Summers was placed by the President of the University of Toledo on the faculty Religious

Council at the beginning of the school year, said Council being charged with the duty of preparing and conducting programs for religious convocations of the students of the University; that thereafter Mr. Summers was appointed by the President as co-chairman of said Religious Council, and has continued to perform those duties to the satisfaction of the University administration.

[fol. 68] That Mr. Summers has by his character and conduct won the respect and friendly regard of the faculty of the University of Toledo and of the students of his classes in Law, and has an excellent reputation in this community for sincerity, integrity and intellectual force.

That Mr. Summers is honest and sincere, dependable, careful and conscientious in every respect; that he respects the institutions of this nation and is a patriotic citizen with a fine sense of responsibility for the future of the country; that affiant feels bound to recommend him to the Character and Fitness Committee of the Supreme Court of the State of Illinois as a man of proper character for admission to the Bar of said court.

Further affiant saith not.

Charles W. Fornoff.

STATE OF OHIO,
Lucas County ss:

Subscribed and sworn to before me this — day of April, 1943.

——, Notary Public.

[fol. 69] EXHIBIT "F" TO PETITION

Battery "I" 62nd. CA(AA).
A. P. O. 302, % Postmaster, NYC.

5 March, 1943, North Africa.

Subject: In Re Clyde Summers and Admission to the Illinois Bar.

To: Horace Garman, 602 Milikin Building, Decatur; Illinois.

1. I have learned that Clyde Summers has been refused admission to the Illinois Bar because of his draft status, and position taken in the present conflict. As a member

of the Armed Forces, and as a member of the Illinois Bar, I should like to volunteer the following information which might help to clarify the facts and issues in the present case.

2. I have known Clyde Summers for over nine years. We first met as opponents in Illinois high school debates and oratorical contests. During those same years we were competing against each other in an Illinois Council of Churches Oratorical Contest, called "The Prince of Peace Contest", for a college scholarship. We both were unsuccessful as far as winning the State Contest, but in the fall of 1935, we both entered the University of Illinois College of Commerce, taking the same pre-law curriculum, with hopes of later entering law school. During our undergraduate studies, we worked together on committees with Campus Religious groups; namely, the YMCA and the Wesley Foundation. In law school we roomed together for two years and took many of the same courses. We have lived as brothers; yet we each have followed our own beliefs in opposite directions with hopes of obtaining a similar goal in our professions.

3. The religious philosophy of Clyde Summers as a conscientious objector to war has not developed as a result of America's entry into the war. In 1936 as a Sophomore in college, the foundations were laid. This was in a period when everyone declared that he would not fight a foreign war; that we must build our diplomatic relations to prevent war; and that we must enact legislation to stem our rushing into an engagement wherein we had nothing to gain. After Pearl Harbor, public opinion in the Nation changed abruptly, but Summers is one of those individuals who will not change his deep convictions for public popularity, nor would he be swayed by mass psychology. He believes that Christianity is diametrically opposed to all wars; therefore he can play no part in them. After taking two years of basic military training at the University of Illinois with an excellent record, Summers developed his own philosophy of War; so his convictions are based on practical observation and not a mere whim or passing fancy.

4. In my association with Clyde Summers, I have discovered nothing that could be interpreted as opposed to [fol. 70] the objects and methods of law. As to his moral

integrity and general character, I should say that his record in college and law school and positions with which he has been entrusted during that time, are sufficient evidence needing no elaboration.

5. Let us take away one factor, which, if this factor did not exist, the question of Summer's character and fitness to practice law in Illinois would not arise. If America was not at war, I believe Summers would be admitted without question.

6. Summers is an example of the average farm boy who has taken advantage of every American educational facility. All seven years of his college work was at a State-Supported University on scholarships. Certainly any person who has been given such opportunities will protect and do his utmost to defend the system which has given him an equal chance. How that system may be best protected will be a question which historians will determine. During the present war is not a time for restricting certain religious and philosophical thought in the name of patriotism; however we cannot allow anyone to interfere with our war effort, for America *must* win this war. The line of demarcation between personal liberties and National Responsibilities is difficult to draw.

7. We must admit that under the National Socialistic State, there is little need for the legal profession. A militaristic system has its own methods of gaining its ends by force of arms rather than legal means; however after this war is over we all will be convinced that there should be a better and less costly method of settling International disputes. In the philosophy of Clyde Summers, you will not find any part that is Un-American. There is no quarrel or questioning of the basic constitutional rights. The only division comes in the methods used in defending and protecting our American Democracy. When covering the whole picture of the character and fitness of a man to practice law, I think that one point should not overshadow many other favorable points that arise in this case.

H. R. C. (Harold R. Clark),

1st. Lt. CAC Battery "I," 62nd. Coast Artillery (AA).

[fol. 71] EXHIBIT "G" TO PETITION

STATE OF ILLINOIS,
County of Champaign, ss.:

I, Paul Burt, being duly sworn, declare on oath that I am Minister of Trinity Methodist Church, in Urbana, Illinois, and Director of the Wesley Foundation at the University of Illinois.

And I further declare that I have known Mr. Clyde W. Summers since the fall of 1937, or the beginning of his junior year at the University of Illinois; that ever since that time, until his graduation from the Law School of the University of Illinois, he was a very faithful attendant upon the services of Trinity Methodist Church and an active participant and leader in the Wesley Foundation, the Methodist student organization at the University of Illinois; that in the fall of 1938 he became a member of the Student Council of the Wesley Foundation, in 1939 Vice President, in 1940 President, and for the year 1941-42, while a senior in the Law School, was employed by me as Student Assistant, in which capacity I would only appoint some one in whom I have complete confidence and in whom I would be ready to place implicit trust.

And I further declare that because of these various relationships held by Mr. Summers to the activities of the Wesley Foundation, I had opportunity of seeing him very frequently, in the last two years almost daily; and that I had long conferences with him regarding nearly every conceivable phase of his Christian beliefs, attitudes, and practices. I came to know him as well as it is possible for any man to know a younger friend and associate. In view of this intimate knowledge, it is my well considered and tested judgment that Mr. Summers is one of the finest young men that it has been my privilege to know, and I have been in a position to know many. I have never failed to be impressed by his intellectual and moral honesty which he has maintained in every circumstance in which I have had the opportunity to observe him, often at the cost of what might have been regarded as his personal advantage. I have known but few to equal him in genuine social concern and unselfish devotion to the public good of any community of which he was a part. He has always stood courageously for his convictions, but never intolerantly. He has always

been understanding and tactful, with genuine respect for the personalities and convictions of other people. Because of this he was held, not only in deep respect, but in real affection by the several hundred students who were actively related to the Wesley Foundation. And this is true also of many others on the University of Illinois campus. In the year 1940-41 he was president of the Student Religious Council which correlates all the religious organiza- [fol. 72] tions on the campus; and in 1941-42 he was counsellor to this same organization. He was widely known on the campus and I know of no one who did not deeply admire and respect him, however they may have differed with him in any matter of belief or policy. In more intimate ways he befriended many students, counselling with them, giving them unsparingly of his time and energies and the benefit of his markedly superior ability and experience. He was the chief organizer and proctor (so recognized by the University of Illinois) of Wesmen, a cooperative resident group of University of Illinois students affiliated with the Wesley Foundation.

And I further declare that I had occasion to counsel with Mr. Summers regarding his vocational plans. I felt him to be especially fitted to enter the ministry of the Methodist Church, and was convinced that he could render distinguished service in that field. I am still so convinced. But Mr. Summers decided to continue the study of the law and to prepare himself for the practices of the law, altogether because he believed that in the legal profession he could be of the largest possible service. I feel sure that this is the motive that has always actuated him to a degree rarely encountered. And if I know anything of human character, I know of no one more fitted by reason of character to be admitted to the practice of law than Mr. Summers.

And I further declare that as early as the school year of 1938-39 I became aware that Mr. Summers shared the convictions usually known as those of Christian pacifism and that he was a conscientious objector to war on account of his Christian beliefs. These convictions had probably become formed in him even prior to that time. They could be regarded as the logical consequence of the interpretation of Christian faith and teaching prevailingly presented in the Wesley Foundation, both in the regular preaching and in that of distinguished Christian leaders who from time to time have visited the Foundation. However, he was also

fully exposed here to other points of view as well, since the most sincere Christians differ in this matter. Mr. Summers is quite decidedly not the kind of person to be unduly influenced in his points of view by his associations or his emotional inclinations. He has very definitely come to his views about war through much wrestling of mind and spirit. And they are altogether based upon his Christian beliefs. On this point I am as deeply convinced as I am of anything. And of course the Methodist Church of which both Mr. Summers and I are a part, recognize both conscientious objection to war and conscientious participation in war, as equally valid positions for its members, entitling them to the full support and fellowship of the church. Having come to these convictions, Mr. Summers has always stood consistently by them in every circumstance I have had the opportunity to observe. And what is more, I have repeatedly seen him endeavor to apply the method of reconciliation in the friction and misunderstanding of various human relationships.

And I further declare that from intimate knowledge of Mr. Summers' views on war I see absolutely nothing that would conflict with the faithful discharge of any responsibility that his admittance to the practice of law would entail. He is not an "absolutist" who does not believe in any kind of restraining force in society. He would, I sincerely believe, fully support a police power democratically established and controlled, operating within a frame-work of law and responsible, through courts, to some higher authority than itself. It is because he believes war is not the exercise of such police power, but an irresponsible and [fol. 73] anarchic use of force, destructive of the best interests of all nations participating, that he believes it to be unchristian and can not conscientiously support it. I know of no one more ready to resist injustice in ways which he believes will make for justice; nor any one more ready to sacrifice himself for principle in ways that will actually serve and not betray that principle.

——— ———, Minister of Trinity Methodist Church, and Director of the Wesley Foundation at the University of Illinois.

Subscribed and sworn to before me this — day of —, A. D., 1943. ——— ———, Notary Public.

[fol. 74] EXHIBIT "H" TO PETITION

February 20, 1943.

To Whom It May Concern:

This certifies that Clyde W. Summers is a personal friend of mine, and that he has been since September, 1940. It was my privilege to become intimately acquainted with him through our various relationships. I often assisted him with his religious activities at the Wesley Foundation during my two years of school at the University of Illinois. He and I spent several evenings together in double dating with girl friends while at school. On numerous occasions, we have met in the libraries, have studied together, and have had long discussions concerning a variety of subjects.

Mr. Summers's religious views and convictions are well known to me. His beliefs are based on his interpretations of the Bible, and I know that he is sincere in his convictions. While I cannot agree with him in his beliefs, as evidenced by the fact that I am in the Army, nevertheless, I hold him in high regard. The road that he has chosen to follow is a much more difficult course for him to travel than the road would have been had he chosen to divorce the dictates of his conscience and gone into the Army. He is not a coward and he is not afraid of death.

Mr. Summers is a clean-living young man whose character is beyond reproach. He is exceptionally alert, intelligent and industrious. He is stable, sensible, and well balanced in all his actions. He has a pleasing personality at all times whether in a group or in private. Mr. Summers is aggressive in pursuing any goal that he may set for himself. The excellent record that he made during his seven years at the University of Illinois is evidence for this statement.

In my humble opinion, I feel that he would be a decided asset to the legal profession, and that he would be a very acceptable member of any group to which he would choose to seek admission. It is a pleasure for me to write this letter in Mr. Summers's behalf, and I shall be glad to answer any specific questions in his regard.

Very sincerely, Max T. Foster, Sergeant, Army of United States.

My home address is: R. F. D. #1, West Brooklyn, Illinois.

[fol. 75] EXHIBIT "I" TO PETITION

Sent direct.
4/27/43.

To whom it may concern:

I have been acquainted with Clyde Summers for five years. During that time we were both attending the University of Illinois until last spring when Clyde finished his work here. We first became acquainted at Wesley Foundation where both of us participated in the student program. During the school year of 1940-41 Clyde was president of the Student Council at Wesley Foundation. It was there that I noticed his abilities as a leader and organizer. But he did not limit his abilities to this small group for it was largely through him that Wesmen, a Wesley Foundation cooperative house for boys, became established for the following school year. Clyde and I lived in this cooperative house during the school year 1941-42 and during that time became very close friends. Our friendship has continued in correspondence since he left the house last spring. As a friend of Clyde I have had an opportunity to discuss various points of religious beliefs with him and thus to see what his views are.

We have discussed the theories of non-violence and its many phases several times always upon my quest for further knowledge of the theory involved—never upon his coming to me to try to convert my philosophy to that of pacifism. We have discussed various phases of Christianity and the place of non-violence in this religion. Various personal conversations have also revealed parts of his naturally conscientious cooperative character.

His theories had the chance to be thoroughly tested during the first year of existance of our cooperative house. During that year he was proctor of our house. It was his responsibility to see that our group abide by the laws of the university as well as those of the city in operating our organization. There were times when it may have seemed necessary to exercise forceful means to maintain order within our house. However, Clyde did not resort to these means but put his theories of non-violence into actual practice and they did work even though there were those who differed radically with Clyde's own point of view. There were those who did not feel the spirit of cooperation which was so essential to our house, but by

personal counseling Clyde brought those into harmony with the spirit of our house. When we found money being stolen, Clyde traced the theft and brought pressure to bear upon the individual who was guilty until the entire problem was solved without a display of violence on the side of either party. At the beginning of our exam period at the end of the semester Clyde posted a list of regulations for us to follow in the interest of all that quiet might be maintained at all hours during the exam period. These regulations were followed to the utmost and no resentment was taken to the strictness of them. The mere fact that he did solve these and various other problems, not to be handled by the group as a whole, proves to me that his ideas are compatible with law and order. Disagreement between Clyde's views and those of many of the members of our house never proved to bring about a great fissure in our group. Unity [fol. 76] of purpose existed throughout the year that he was proctor. By diplomacy and kindness he helped us in laying the foundation of our organization. At no time were we forced into any action. The constitution he helped frame for our house and his actions here have been in perfect harmony with his theories. I have noticed especially the consistency with which he has followed his beliefs yet at all times keeping an open mind.

Our personal discussions supplemented much of the material which I have investigated upon the conscientious objector's position. I have studied this position from the standpoint of a pre-theological student, having read various articles and books on the subject. While I do not hold the position of the conscientious objector and will soon be in military service, I feel that I do understand the philosophy of such a stand. In the light of these studies and our discussions together I feel that I thoroughly understand Clyde and his position. I have never felt that his theories would be in the way of his upholding the constitution of our country nor of carrying out its principles. I feel that Clyde is quite capable mentally and morally of fulfilling responsibility that the practice of law requires.

Dean A. Shinneman. President, Wesmen.

April —, 1943.

——, Notary Public.

[fol. 77] [Endorsed:] No. N. R. 462. In the Supreme Court of Illinois. Clyde Wilson Summers, Petitioner, vs.

Committee on Character and Fitness for Third Appellate District, Respondent. Petition for an order upon the Committee on Character and Fitness for the Third Appellate District to certify petitioner for admission to the Bar of Illinois, and for an order for Admission to the practice of law in the State of Illinois. Motion by petitioner for an order upon the Committee on Character and Fitness for the Third Appellate District to certify petitioner, Clyde Wilson Summers, for admission to the bar of Illinois, etc. Filed Aug. 2, 1943 Edward F. Cullinane, Clerk pro tempore.

[fol. 78] STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of September in the year of our Lord, one thousand nine hundred and forty-three, within and for the State of Illinois.

Present: June C. Smith, Chief Justice; Justice Clyde E. Stone, Justice Walter T. Gunn, Justice William J. Fulton, Justice Francis S. Wilson, Justice Loren E. Murphy, Justice Charles H. Thompson; George F. Barrett, Attorney General; Warren C. Murray, Marshal.

Attest: Edward F. Cullinane, Clerk pro tempore.

Be it remembered, that, to-wit, on the 20th day of September, 1943, a certain letter was addressed to Mr. Horace B. Garman, 602 Millikin Building, Decatur, Illinois, signed by June C. Smith, Chief Justice, a copy of which is in the words and figures following, to-wit:

[fol. 79] SUPREME COURT, STATE OF ILLINOIS, SPRINGFIELD

September 20, 1943.

Mr. Horace B. Garman, 602 Millikin Building, Decatur, Illinois.

DEAR MR. GARMAN:

This Court has an elaborate petition filed by Francis Heisler, an attorney of 77 West Washington Street, Chicago, Illinois, on behalf of Clyde Wilson Summers.

The substance of the petition is that the Board should overrule the action of the Committee on Character and Fit-

ness, in which the Committee refused to give him a certificate because he is a conscientious objector, and for that reason refused to register or participate in the present national emergency.

I am directed to advise you that the Court is of the opinion that the report of the Committee on Character and Fitness should be sustained.

Yours very truly, (Signed) June C. Smith, Chief Justice.

JCS:k.

[fol. 80] And afterwards, to-wit, on the 20th day of September, 1943, a certain letter was addressed to Mr. Clyde Wilson Summers, % Francis Heisler, 77 West Washington Street, Chicago 2, Illinois, signed by June C. Smith, Chief Justice, a copy of which said letter is in the words and figures following, to-wit:

[fol. 81] Supreme Court, State of Illinois, Springfield

September 20, 1943.

Mr. Clyde Wilson Summers, % Francis Heisler, 77 West Washington Street, Chicago 2, Illinois.

Dear Sir:

Your petition to be admitted to the bar, notwithstanding the unfavorable report of the Committee on Character and Fitness for the Third Appellate Court District, has received the consideration of the Court.

I am directed to advise you that the Court is of the opinion that the report of the Committee on Character and Fitness should be sustained.

Yours very truly, (Signed) June C. Smith, Chief Justice.

JCS:k.

[fol. 82] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

I, Earl Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify the foregoing to be a true copy of: 1. Petition filed on August 2, 1943. 2. Letter to Horace B. Garman dated September 20, 1943. 3. Letter to Clyde Wilson Summers dated September 20, 1943, filed in this office —— in a certain cause entitled in this Court.

Non Record No. 462

In Re Clyde Wilson Summers

Witness: my hand and seal of said Supreme Court, in Springfield, in said State, this 22nd day of January A. D. 1945.

Earl Benjamin Searcy, Clerk. (Seal.)

[fol. 83] SUPREME COURT OF THE UNITED STATES

IN RE CLYDE W. SUMMERS

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon consideration of the application of counsel for the petitioner,

It is ordered that the time for filing petition for certiorari be extended for a period of seven days, providing the time for filing such petition has not already expired.

Felix Frankfurter, Associate Justice of the Supreme Court of the United States.

Dated this 22d. day of June, 1944.

[fol. 84] SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1944

No. 205

IN RE CLYDE WILSON SUMMERS, Petitioner

ORDER ALLOWING CERTIORARI—Filed December 11, 1944

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted and the writ is ordered to issue.

[fol. 85] UNITED STATES OF AMERICA,

The President of the United States of America, to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Being informed that there is now pending before you a proceeding in which Clyde Wilson Summers has filed a petition for admission to the practice of the law in the courts of the State of Illinois, and we, being willing for certain reasons that the record and proceedings therein, or the papers upon which the court based its denial of the petitioner's application for admission to the bar, should be certified by the said Supreme Court of the State of Illinois and removed into the Supreme Court of the United States,

Do hereby command you that you send without delay to the Supreme Court of the United States, the record and/or papers and proceedings in said cause, so that the Supreme Court of the United States may act thereon as of right and according to law ought to be done.

Witness the Honorable Harlan F. Stone, Chief Justice of the United States, the 18th day of December in the year of our Lord one thousand nine hundred and forty-four.

(Signed) Charles Elmore Cropley, Clerk of the Supreme Court of the United States.

[fol. 86] Endorsed on Cover: Enter Julien Cornell File No. 48,658 Illinois Supreme Court, Term No. 205. In re Clyde Wilson Summers, Petitioner, Petition for a writ of certiorari and exhibit thereto. Filed June 29, 1944. Term No. 205 O. T. 1944.